International Labour Conference
86th Session 1998

Report III
(Part 1A)

Report of the Committee of Experts on the Application of Conventions and Recommendations

General report and observations concerning particular countries

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International Labour Office Geneva

International Labour Conference
86th Session 1998

Report III
(Part 1A)

Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations

Report of the Committee of Experts on the Application of Conventions and Recommendations

(articles 19, 22 and 35 of the Constitution)

General Report
and observations concerning particular countries

International Labour Office Geneva

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Contents

Page

Index to comments made by the Committee, by country vii

Part one. General Report

I. Introduction 3

II. General 7

Membership of the Organization 7

New standards adopted by the Conference in 1997 and the coming into force of a Convention 8

Ratifications and denunciations 8

Constitutional and other procedures 9

A. Complaint submitted under article 26 of the ILO Constitution 9

B. Representations submitted under article 24 of the ILO Constitution 10

C. Special procedures concerning freedom of association 12

50th anniversary of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and of the Universal Declaration of Human Rights 13

A. 50th anniversary of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) 13

B. 50th anniversary of the Universal Declaration of Human Rights 16

Functions in regard to other international instruments of universal and regional character 17

A. United Nations treaties concerning human rights 17

B. European Code of Social Security and its Protocol 18

C. European Social Charter and Additional Protocol 19

Collaboration with other international organizations 19

Cooperation in the field of standards with the United Nations and the specialized agencies 19

Matters relating to human rights 20

Questions concerning the application of Conventions 21

Application of the Conventions on labour inspection 21

Application of the Employment Policy Convention, 1964 (No. 122) 22

Application of Conventions on child labour 23

Application of Conventions in export processing zones and enterprises 24

Page

III. **Action concerning the elimination of forced labour** 25

Special reports on the Forced Labour Convention, 1930 (No. 29) and on the Abolition of Forced Labour Convention, 1957 (No. 105), from countries that have not ratified them 25

A. Ratification of the forced labour Conventions 25

B. Collaboration with other international organizations 29

C. Recent developments: Prison labour 29

IV. **Technical assistance in the field of standards** 32

A. Direct contacts 32

B. Promotional activities 32

C. Standards and multidisciplinary advisory teams 34

V. **Role of employers' and workers' organizations** 34

Observations made by employers' and workers' organizations 35

VI. **Reports on ratified Conventions** (articles 22 and 35 of the Constitution) 38

Supply of reports 38

Reports requested and received 39

Compliance with reporting obligations 39

Obstacles to compliance with reporting obligations 40

Late reports 41

Supply of first reports 42

Replies to the comments of the supervisory bodies 43

Examination of reports 44

Observations and direct requests 44

Cases of progress 45

Practical application 46

VII. **Submission of Conventions and Recommendations to the competent authorities** (article 19, paragraphs 5, 6 and 7, of the Constitution) 48

83rd Session 48

31st to 82nd Sessions 48

General aspects 49

Comments of the Committee and replies from governments 49

Special problems 50

VIII. **Instruments chosen for reports under article 19 of the Constitution** 50

General Survey 51

Appendix. List of the 56 member States which have been asked to submit reports on the Forced Labour Convention, 1930 (No. 29), and/or on the Abolition of Forced Labour Convention, 1957 (No. 105) (article 19 of the Constitution) 52

Page

Part two. Observations concerning particular countries

I. **Observations concerning reports on ratified Conventions** (article 22 of the Constitution) . . . 57

A. **General observations** . . . 57

B. **Individual observations** . . . 61

Appendix I. Table of reports received on ratified Conventions as at 12 December 1997 . . . 458

Appendix II. Statistical table of reports received on ratified Conventions as at 12 December 1997 . . . 468

II. **Observations on the application of Conventions in non-metropolitan territories** (article 22 and article 35, paragraphs 6 and 8, of the Constitution) . . . 470

A. **General observations** . . . 470

B. **Individual observations** . . . 470

Appendix. Table of reports received on ratified Conventions (non-metropolitan territories) as at 12 December 1997 . . . 481

III. **Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference** (article 19 of the Constitution) . . . 484

Appendix I. Information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities . . . 498

Appendix II. Overall position of member States as at 12 December 1997 . . . 505

Appendix III. Summary of information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities . . . 507

Part three. General Survey on the reports on the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983

This part of the report is published in a separate volume as Report III (Part 1B).

Index to comments made by the Committee, by country

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
Afghanistan	General Report, paras. 112, 130, 155, 159 I B, Nos. 105, 111, 142 III	Art. 22, general Art. 22, Nos. 105, 137, 139, 141
Albania	General Report, paras. 112, 130, 159 III	Art. 22, general Art. 22, Nos. 16, 98
Algeria	I B, Nos. 87, 92, 105, 111, 122	Art. 22, Nos. 68, 91, 100, 105, 111, 144 Subm.
Angola	General Report, paras. 112, 130 I B, Nos. 100, 111	Art. 22, general Art. 22, Nos. 26, 91, 100, 105, 111 Subm.
Antigua and Barbuda	General Report, paras. 112, 130 III	Art. 22, general Art. 22, Nos. 29, 81, 111
Argentina	I B, Nos. 35, 42, 87, 95, 98, 107, 111	Art. 22, Nos. 42, 87, 107, 115, 154 Subm.
Armenia	General Report, paras. 112, 126 I A III	
Australia	I B, Nos. 98, 122	Art. 22, Nos. 111, 123, 131, 135, 173 Art. 35, Nos. 122, 160 Subm.
Austria	I B, Nos. 87, 94	Art. 22, Nos. 26, 111, 135, 172 Subm.
Azerbaijan	I B, No. 138	Art. 22, Nos. 16, 29, 98, 119, 122, 138, 140, 144, 151, 154 Subm.
Bahamas	General Report, para. 130 I B, No. 144 III	Art. 22, Nos. 17, 26, 81
Bahrain	General Report, para. 112	Art. 22, general
Bangladesh	General Report, paras. 112, 130 I B, Nos. 29, 98, 105, 107, 111 III	Art. 22, general Art. 22, Nos. 16, 81, 105, 107, 144
Barbados	General Report, paras. 112, 126, 130 I A and B, Nos. 63, 87, 118	Art. 22, general Art. 22, Nos. 10, 16, 26, 98, 102, 111, 115, 122, 128, 144 Subm.

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
Belarus	I B, Nos. 87, 138	Art. 22, Nos. 29, 87, 100, 108, 111, 138, 144 Subm.
Belgium	I B, Nos. 87, 105, 122 III	Art. 22, Nos. 8, 111, 115, 148
Belize	I B, Nos. 10, 98 III	Art. 22, No. 26
Benin	I B, No. 87	Art. 22, No. 33 Subm.
Bolivia	General Report, paras. 112, 130 I A and B, Nos. 14, 20, 77, 81, 87, 98, 102, 103, 106, 118, 121, 122, 128, 129, 131 III	Art. 22, Nos. 100, 105, 111, 118, 120, 123, 131, 160
Bosnia and Herzegovina	General Report, paras. 112, 130 I A III	Art. 22, No. 122
Botswana		Subm.
Brazil	I B, Nos. 81, 91, 92, 98, 103, 107, 111, 115, 118, 122, 131, 137, 148, 152, 155 III	Art. 22, Nos. 16, 19, 53, 111, 113, 115, 118, 125, 131, 141, 144, 147, 148
Bulgaria	I B, No. 111 III	Art. 22, Nos. 87, 100, 111, 138
Burkina Faso	I B, No. 87	Art. 22, Nos. 98, 100, 111 Subm.
Burundi	General Report, paras. 112, 126, 130 I A and B, Nos. 11, 29	Art. 22, Nos. 19, 81, 94, 105 Subm.
Cambodia	I B, No. 29 III	Art. 22, No. 122
Cameroon	General Report, paras. 112, 130, 155 I B, Nos. 9, 87, 94, 98, 105 III	Art. 22, general Art. 22, Nos. 3, 100, 111, 122
Canada	I B, Nos. 105, 122	Art. 22, Nos. 111, 147, 160 Subm.
Cape Verde	I B, No. 98	Art. 22, No. 111 Subm.

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
Central African Republic	I B, Nos. 19, 81, 87, 118, 119 III	Art. 22, Nos. 10, 26, 33, 81, 100, 111, 118
Chad	I B, Nos. 26, 29, 81, 87, 95, 98, 105, 111	Art. 22, Nos. 29, 33, 81, 87, 111 Subm.
Chile	General Report, para. 130 I B, Nos. 3, 9, 20, 35, 36, 37, 38, 103, 111, 127 III	Art. 22, Nos. 10, 100, 111, 122, 144, 156
China		Art. 22, Nos. 16, 144 Subm.
Colombia	I B, Nos. 5, 7, 9, 10, 12, 22, 26, 87, 95, 98, 111	Art. 22, Nos. 7, 10, 22, 26, 98, 99 Subm.
Comoros	I B, No. 81 III	Art. 22, Nos. 19, 26, 81, 98, 99, 100, 122
Congo	I B, Nos. 29, 95 III	Art. 22, No. 33
Costa Rica	I B, Nos. 1, 81, 87, 98, 111, 117, 122, 131, 135, 138 III	Art. 22, Nos. 29, 81, 87, 95, 120, 131, 138, 141, 144
Côte d'Ivoire	General Report, paras. 112, 130 I B, Nos. 29, 98, 135, 144	Art. 22, general Art. 22, Nos. 29, 81, 100, 111, 133 Subm.
Croatia	I B, Nos. 48, 87, 98, 102	Art. 22, Nos. 9, 29, 87, 100, 111, 138 Subm.
Cuba	I B, Nos. 103, 111, 122, 138	Art. 22, Nos. 19, 92, 110, 138 Subm.
Cyprus	General Report, paras. 112, 126 I A and B, Nos. 87, 105, 111	Art. 22, general Art. 22, Nos. 102, 111, 122, 123, 162 Subm.
Czech Republic	General Report, paras. 112, 130 I A and B, Nos. 122, 155	Art. 22, Nos. 29, 87, 100, 155, 161 Subm.
Democratic Republic of the Congo	General Report, paras. 112, 130 I B, Nos. 29, 98, 119 III	Art. 22, general Art. 22, Nos. 26, 29, 62, 118, 158
Denmark	General Report, paras. 112, 130 I B, Nos. 98, 122	Art. 22, Nos. 102, 111, 115, 119, 144, 163 Art. 35, general Art. 35, Nos. 9, 16, 92, 122 Subm.

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
Djibouti	General Report, paras. 112, 130, 159 I B, Nos. 9, 87, 88, 100 III	Art. 22, general Art. 22, Nos. 10, 19, 23, 26, 33, 55, 69, 81, 91, 94, 95, 99, 100, 105, 106, 115, 120, 122, 126
Dominica		Art. 22, Nos. 8, 26, 81, 97 Subm.
Dominican Republic	I B, Nos. 98, 100, 105	Art. 22, Nos. 10, 29, 111, 171 Subm.
Ecuador	I B, Nos. 87, 98, 105, 111, 122, 131, 153 III	Art. 22, Nos. 111, 122, 123, 128, 131
Egypt	I B, Nos. 98, 111	Art. 22, Nos. 29, 111, 139, 144
El Salvador	III	Art. 22, Nos. 99, 111, 131, 141, 144
Equatorial Guinea	III	
Eritrea	III	
Estonia		Art. 22, Nos. 8, 12, 98, 144 Subm.
Ethiopia	General Report, paras. 112, 130 I B, Nos. 87, 98	Art. 22, general Art. 22, Nos. 98, 111, 155
Fiji	General Report, para. 159 I B, No. 98	Subm.
Finland	I B, Nos. 98, 100, 128	Art. 22, Nos. 111, 121, 128, 138, 146, 158, 173 Subm.
France	General Report, paras. 112, 130 I B, Nos. 81, 87, 115, 118, 122, 138 II B, Nos. 8, 19, 22, 73, 82, 98, 111, 137, 149	Art. 22, Nos. 81, 92, 100, 111, 115, 138, 139, 144, 146 Art. 35, general Art. 35, Nos. 9, 10, 13, 33, 53, 69, 92, 100, 111, 115, 120, 123, 129, 131, 136, 144, 146 Subm.
Gabon	General Report, paras. 112, 130 I B, No. 105 III	Art. 22, general Art. 22, Nos. 26, 99, 105, 111, 144, 158
Gambia		Subm.
Georgia	General Report, para. 112 III	Art. 22, general

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
Germany	I B, Nos. 98, 111	Art. 22, Nos. 111, 115, 125, 138 Subm.
Ghana	General Report, paras. 112, 130 I B, Nos. 81, 98, 115, 119 III	Art. 22, general Art. 22, Nos. 26, 29, 74, 81, 103, 111, 120
Greece	I B, Nos. 9, 81	Art. 22, Nos. 92, 111, 122, 138, 144, 160
Grenada	General Report, paras. 112, 126, 130 I A III	Art. 22, Nos. 26, 58, 81, 99, 105
Guatemala	I B, Nos. 50, 98, 103, 110, 111, 119, 138 III	Art. 22, Nos. 103, 110, 111, 122, 138, 141, 144, 160
Guinea	General Report, para. 155 I B, Nos. 87, 111, 139 III	Art. 22, Nos. 3, 10, 33, 98, 100, 111, 122, 139
Guinea-Bissau	General Report, paras. 112, 130 I B, No. 100 III	Art. 22, general Art. 22, Nos. 19, 26, 81, 91, 98, 100, 108, 111
Guyana	I B, Nos. 136, 139	Art. 22, Nos. 10, 98, 111, 115, 136, 144 Subm.
Haiti	General Report, paras. 112, 130, 155, 159 I B, No. 98 III	Art. 22, general Art. 22, No. 111
Honduras	General Report, paras. 112, 130 III	Art. 22, general Art. 22, Nos. 42, 81, 98, 111
Hungary	I B, Nos. 111, 122 III	Art. 22, Nos. 10, 29, 98, 103, 105, 115, 123, 139, 144, 148, 151, 155, 165, 166
Iceland	General Report, para. 130 I B, No. 98	Art. 22, Nos. 102, 111, 122, 155
India	I B, Nos. 1, 26, 29, 107, 111, 115, 141, 144 III	Art. 22, Nos. 16, 26, 29, 107, 111, 115, 136, 160
Indonesia	I B, Nos. 29, 98	Art. 22, general Art. 22, Nos. 19, 29, 100, 144 Subm.

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
Islamic Republic of Iran	I B, No. 111	Art. 22, Nos. 19, 29, 100, 105 Subm.
Iraq	General Report, para. 130 I B, Nos. 19, 92, 98, 105, 111, 118, 135	Art. 22, Nos. 100, 105, 118, 120, 122, 138, 139, 146 Subm.
Ireland	I B, Nos. 122, 138 III	Art. 22, Nos. 29, 100, 138
Israel	General Report, para. 130 I B, No. 138	Art. 22, Nos. 81, 91, 92, 111, 122, 138 Subm.
Italy	I B, Nos. 92, 103, 118, 146	Art. 22, Nos. 9, 92, 100, 102, 103, 105, 111, 118, 119, 133, 138 Subm.
Jamaica	I B, Nos. 87, 98	Art. 22, Nos. 16, 100, 111, 122 Subm.
Japan	I B, Nos. 98, 147	Art. 22, Nos. 98, 102, 122, 147
Jordan	I B, Nos. 98, 119, 135	Art. 22, Nos. 29, 98, 111, 117, 122, 123
Kazakhstan	III	
Kenya	I B, Nos. 17, 29, 98, 138 III	Art. 22, Nos. 29, 81, 129, 138, 144
Kuwait	General Report, paras. 112, 130 I B, Nos. 1, 30, 117	Art. 22, general Art. 22, Nos. 29, 111, 117, 119 Subm.
Kyrgyzstan	General Report, paras. 112, 126, 130 I A III	Art. 22, general Art. 22, Nos. 29, 98, 100, 122, 147
Lao People's Democratic Republic	General Report, para. 112 I A	Subm.
Latvia	General Report, paras. 112, 126, 130 I A and B, Nos. 119, 131	Art. 22, general Art. 22, Nos. 87, 98, 100, 105, 108, 115, 131, 142, 149, 160 Subm.
Lebanon	I B, No. 98 III	Art. 22, Nos. 8, 19, 71, 111, 115, 122
Lesotho	General Report, para. 159 I B, No. 5	Art. 22, Nos. 26, 29, 98 Subm.

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
Liberia	General Report, paras. 112, 126, 130, 155, 159 I A and B, Nos. 22, 29, 55, 58, 87, 92, 98, 105, 112, 113, 114 III	Art. 22, Nos. 29, 53, 105, 111
Libyan Arab Jamahiriya	General Report, paras. 112, 130, 159 I B, Nos. 81, 95, 98, 103, 105, 111, 121, 128, 130 III	Art. 22, general Art. 22, Nos. 29, 52, 53, 95, 100, 121, 122, 128, 130, 131, 138
Lithuania	III	Art. 22, Nos. 87, 90, 100, 105, 111, 131, 135, 144, 154
Luxembourg		Art. 22, Nos. 8, 55, 56, 87, 138
Madagascar	General Report, paras. 112, 130, 155 I B, Nos. 29, 100, 119, 120 III	Art. 22, general Art. 22, Nos. 33, 100, 111, 122, 123
Malawi	General Report, paras. 112, 130	Art. 22, general Art. 22, Nos. 26, 99, 100, 111, 144 Subm.
Malaysia	General Report, paras. 112, 130 I B, Nos. 19, 97, 98	Art. 22, general Art. 22, No. 119 Subm.
Mali	General Report, paras. 112, 130 I B, No. 81 III	Art. 22, general Art. 22, Nos. 26, 29, 33, 81, 105, 111
Malta	General Report, paras. 112, 130 I B, No. 138	Art. 22, general Art. 22, Nos. 73, 111, 119, 138 Subm.
Mauritania	General Report, para. 112 I B, Nos. 29, 81, 111 III	Art. 22, general Art. 22, Nos. 3, 29, 81, 102, 111, 122
Mauritius	I B, Nos. 98, 105, 138 III	Art. 22, Nos. 29, 97, 138, 144, 160
Mexico	I B, Nos. 22, 102, 155	Art. 22, Nos. 16, 22, 53, 110, 111, 123, 144, 155, 166, 173 Subm.
Republic of Moldova	General Report, paras. 112, 126, 159 I A	
Mongolia	III	Art. 22, Nos. 103, 111

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
Morocco	General Report, paras. 112, 130 I B, Nos. 26, 29, 81, 98, 99, 100, 105, 119, 122 III	Art. 22, general Art. 22, Nos. 29, 81, 100, 111, 146, 158
Mozambique	I B, No. 111 III	Art. 22, Nos. 17, 100, 105
Myanmar	General Report, paras. 112, 130 I A and B, Nos. 17, 52, 87	Art. 22, No. 26
Namibia	I B, No. 87	Art. 22, Nos. 98, 144
Nepal	General Report, paras. 112, 159 I B, Nos. 100, 111	Art. 22, general Art. 22, Nos. 111, 131 Subm.
Netherlands	General Report, paras. 112, 130 I B, Nos. 122, 131, 133 II B, Nos. 17, 144	Art. 22, Nos. 96, 98, 102, 111, 115, 135, 144 Art. 35, Nos. 10, 25, 33, 87, 94, 95, 101, 122, 135, 137, 138, 145, 146 Subm.
New Zealand	I B, Nos. 26, 81, 99, 111	Art. 22, Nos. 9, 16, 69, 81, 144 Art. 35, No. 111 Subm.
Nicaragua	General Report, para. 112 I B, Nos. 12, 119, 138, 139	Art. 22, general Art. 22, Nos. 13, 17, 24, 25, 98, 115, 138, 144
Niger	General Report, paras. 112, 130 I B, No. 87	Art. 22, general Art. 22, Nos. 100, 111, 119, 131, 138, 142 Subm.
Nigeria	General Report, paras. 112, 126, 130, 159 I A and B, Nos. 87, 105	Art. 22, general Art. 22, Nos. 19, 26, 105, 155 Subm.
Norway	I B, Nos. 87, 98, 122	Art. 22, Nos. 8, 9, 81, 111, 119, 138, 163, 170
Pakistan	I B, Nos. 22, 87, 96, 98, 111	Art. 22, Nos. 18, 144 Subm.
Panama	I A and B, Nos. 29, 87, 94, 98	Art. 22, Nos. 10, 29, 87, 94, 110, 111, 122, 123 Subm.
Papua New Guinea	I B, No. 98 III	Art. 22, Nos. 10, 26, 99, 122

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
Paraguay	General Report, paras. 130, 159 I B, Nos. 26, 60, 87, 98, 111, 115, 120, 122 III	Art. 22, general Art. 22, Nos. 60, 87, 99, 100, 119, 122, 169
Peru	I B, Nos. 1, 24, 25, 71, 87, 88, 98, 102, 122, 139, 169	Art. 22, Nos. 10, 53, 69, 87, 102, 111, 139
Philippines	General Report, para. 130 I B, Nos. 111, 141	Art. 22, Nos. 17, 98, 110, 111, 122, 144
Poland	I B, Nos. 98, 122	Art. 22, Nos. 9, 74, 91, 92, 111, 138, 144, 151
Portugal	I B, Nos. 87, 98, 103, 111, 122	Art. 22, Nos. 22, 87, 92, 102, 103, 135, 144, 146, 171
Romania	I B, Nos. 98, 111	Art. 22, Nos. 13, 29, 81, 111, 122, 144, 168
Russian Federation	I B, Nos. 95, 108, 138	Art. 22, Nos. 95, 119, 147
Rwanda	I B, Nos. 87, 98, 111, 135	Art. 22, Nos. 87, 100, 111 Subm.
Saint Lucia	General Report, paras. 112, 130, 155, 159 I A and B, Nos. 17, 87, 98 III	Art. 22, Nos. 5, 19, 94, 95, 97, 100, 111
Saint Vincent and the Grenadines		Subm.
San Marino		Art. 22, No. 138 Subm.
Sao Tome and Principe	I B, Nos. 18, 19, 87 III	Art. 22, general Art. 22, Nos. 19, 87, 88, 98, 100, 111, 144, 159
Saudi Arabia	I B, No. 111	Art. 22, Nos. 29, 111
Senegal	I B, Nos. 87, 105 III	Art. 22, Nos. 10, 100, 102, 105
Seychelles	General Report, paras. 112, 126, 130 I A and B, Nos. 8, 87 III	Art. 22, general Art. 22, Nos. 8, 10, 11, 16, 87, 99
Sierra Leone	General Report, paras. 112, 130, 155 I A and B, Nos. 29, 88, 98, 105, 111, 119, 125, 144 III	Art. 22, Nos. 26, 95, 99, 100, 101, 111, 126

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
Singapore	I B, Nos. 5, 98	Art. 22, No. 5
Slovakia	I B, No. 111	Art. 22, Nos. 10, 29, 111, 122, 123, 148, 155, 163, 164 Subm.
Slovenia	I B, Nos. 122, 138	Art. 22, Nos. 9, 13, 19, 29, 111, 138, 139
Solomon Islands	General Report, paras. 155, 159 I B, No. 8 III	Art. 22, Nos. 16, 26, 29
Somalia	General Report, paras. 112, 130, 159 I A	Art. 22, No. 111
South Africa	I B, No. 26	Art. 22, No. 26 Subm.
Spain	I B, Nos. 24, 44, 102, 111, 113, 131, 137, 144, 154	Art. 22, Nos. 24, 55, 102, 123, 165 Subm.
Sri Lanka	General Report, paras. 112, 130 I B, Nos. 81, 98, 103, 131, 135, 160	Art. 22, general Art. 22, Nos. 10, 100, 110, 131, 144, 160 Subm.
Sudan	I B, Nos. 29, 98, 105, 111 III	Art. 22, Nos. 100, 111, 122
Suriname	I B, No. 118 III	Art. 22, general Art. 22, No. 144
Swaziland	I B, Nos. 87, 98 III	Art. 22, Nos. 19, 81, 89, 90, 94, 95, 100, 111, 123, 144, 160
Sweden	I B, Nos. 98, 100, 121, 122	Art. 22, Nos. 29, 102, 111, 128, 137, 157, 158, 164, 170 Subm.
Switzerland	I B, No. 115	Art. 22, Nos. 81, 111, 115, 119, 139, 153, 162, 163, 172 Subm.
Syrian Arab Republic	I B, Nos. 19, 98, 118 III	Art. 22, Nos. 29, 111, 115, 139, 144
Tajikistan	General Report, paras. 112, 130 I B, No. 138	Art. 22, general Art. 22, Nos. 29, 73, 92, 98, 100, 111, 122, 138, 147, 160

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
United Republic of Tanzania	General Report, paras. 112, 130 I B, Nos. 88, 98, 105, 135 III	Art. 22, general Art. 22, Nos. 59, 105, 131, 134, 137, 144, 148
Thailand	I B, No. 29	Art. 22, No. 123 Subm.
The former Yugoslav Republic of Macedonia	III	
Togo		Art. 22, Nos. 100, 111, 144
Trinidad and Tobago	I B, Nos. 87, 98	Art. 22, No. 111
Tunisia	General Report, para. 130 I B, Nos. 87, 105, 122, 127	Art. 22, Nos. 19, 87, 100, 105, 111, 118, 123, 127, 142
Turkey	I B, Nos. 26, 94, 95, 98, 99, 102, 118, 119, 122, 158	Art. 22, Nos. 26, 58, 102, 115, 123, 135, 142, 151
Turkmenistan	III	
Uganda	I B, No. 17	Art. 22, Nos. 122, 123, 158 Subm.
Ukraine	I B, Nos. 52, 95	Art. 22, Nos. 2, 111, 119, 122, 138, 144, 154, 158 Subm.
United Arab Emirates		Subm.
United Kingdom	I B, Nos. 29, 44, 98, 102, 122, 147 II B, No. 98	Art. 22, No. 102 Art. 35, Nos. 26, 29, 81, 98, 99, 115, 122, 135, 147, 160 Subm.
United States		Art. 22, No. 147
Uruguay	I B, Nos. 81, 99, 100, 111, 131, 151, 153, 155	Art. 22, Nos. 81, 110, 111, 113, 115, 131, 139 Subm.
Uzbekistan	General Report, paras. 112, 126 I A III	
Venezuela	General Report, para. 112 I B, Nos. 22, 29, 87, 95, 98, 138, 155 III	Art. 22, general Art. 22, Nos. 81, 87, 95, 100, 111, 138, 144, 153, 155
Viet Nam		Art. 22, Nos. 6, 27, 120, 155 Subm.

Country	Observations made by the Committee (published in the present report)[1]	Direct requests addressed by the Committee to the governments (not published in the present report)[2]
Yemen	General Report, paras. 112, 126, 130, 155, 159 I A and B, No. 98 III	Art. 22, general Art. 22, Nos. 19, 100, 111, 122, 131, 132, 135, 156, 158
Yugoslavia	I A	
Zambia	I B, Nos. 105, 123	Art. 22, Nos. 105, 123, 141, 144 Subm.
Zimbabwe		Art. 22, No. 144 Subm.

[1] The roman numerals and letters refer to sections of Part Two of this report and the Arabic numerals to the numbers of the Conventions.

[2] The abbreviations used in respect of direct requests are the following:
"Art. 22": application of ratified Conventions in member States.
"Art. 35": application of ratified Conventions in non-metropolitan territories.
"Subm": submission of Conventions and Recommendations to the competent authorities.
The numbers refer to Conventions.

PART ONE

General Report

GENERAL REPORT

I. Introduction

1. The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by States Members of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 68th Session in Geneva from 27 November to 12 December 1997. The Committee has the honour to present its report to the Governing Body.

2. The Committee learned with regret of the death of Professor Roman Zinovievich Livshitz, who had been a member of the Committee since 1993. It wishes to pay tribute to the memory of a man who made an outstanding contribution in the field of labour law and legal theory through his work at the Moscow International (Russian-American) University, and as the Co-Chairman of the Working Group which drafted the Labour Code of the Russian Federation, and as evidenced by his numerous publications.

3. The present composition of the Committee is as follows:

Ms. Janice R. BELLACE (United States),

Samuel Blank Professor, Professor of Legal Studies and Management, and Deputy Dean of the Wharton School, University of Pennsylvania; Senior Editor, Comparative Labor Law and Policy Journal; member of the Executive Board of the US branch of the International Society of Labour Law and Social Security; member of the Public Review Board of the United Automobile, Aerospace and Agricultural Implements Workers' Union; former secretary of the Section on Labor Law, American Bar Association.

Mr. Prafullachandra Natvarlal BHAGWATI (India),

Former Chief Justice of India; former Chief Justice of the High Court of Gujarat; former Chairman, Legal Aid Committee and Judicial Reforms Committee, Government of Gujarat; former Chairman, Committee on Juridicare, Government of India; former Chairman of the Committee appointed by the Government of India for implementing legal aid schemes in the country; member of the International Committee on Human Rights of the International Law Association; member of the Editorial Committee of Reports of the Commonwealth; Chairman of the National Committee for Social and Economic Welfare of the Government of India; Ombudsman for the national newspaper *Times of India*; Chairman of the Advisory Board of the Centre for Independence of Judges and Lawyers, Geneva; Vice-President of El Taller; Chairman of the Panel for Social Audit of Telecom and Postal Services in India; member of the United Nations Human Rights Committee.

The Right Honourable Sir William DOUGLAS, PC, KCMG (Barbados),

Former Ambassador; former Chief Justice of Barbados; former Chairman, Commonwealth Caribbean Council of Legal Education; former Chairman, Inter-American Juridical Committee; former Judge of the High Court of Jamaica.

Ms. Blanca Ruth ESPONDA ESPINOSA (Mexico),

Doctor of Law; former President of the Senate of the Republic (1989) and of the Foreign Relations Committee; former President of the Population and Development Committee of the Chamber of Deputies and member of the Labour and Social Security Committee; Professor of International Public Law at the Law Faculty of the National Autonomous University of Mexico; former President of the Inter-American Parliamentary Group on Population and Development and former Vice-President of the Global Forum of Spiritual and Parliamentary Leaders; member of the National Federation of Lawyers and of the Lawyers' Forum of Mexico; recipient of the award for Juridical Merit "the Lawyer of the Year (1993)"; former Director of the National Institute for Labour Studies and former editor of the Mexican Labour Review.

Ms. Robyn A. LAYTON, QC (Australia),

Barrister-at-Law; Director, National Rail Corporation; former Commissioner on Health Insurance Commission; former chairperson of the Australian Health Ethics Committee of the National Health and Medical Research Council; former Honorary Solicitor for the South Australian Council for Civil Liberties; former Solicitor for the Central Aboriginal Land Council; former Chairman of the South Australian Sex Discrimination Board; former Judge and Deputy President of the South Australian Industrial Court and Commission; former Deputy President of the Federal Administrative Appeals Tribunal.

Mrs. Ewa LETOWSKA (Poland),

Professor of Civil Law (Institute of Legal Studies of the Polish Academy of Sciences); former parliamentary ombudsman; former member of the Legislative Council to the Council of Ministers; former member of the Commission for the Reform of Civil Law; member of the Commission for Civil Law Codification; member of the Helsinki Committee; member of the International Commission of Jurists; member of the Polish Academy of Arts and Sciences.

Baron Bernd von MAYDELL (Germany),

Professor of Civil Law, Labour Law and Social Security Law; Director of the Max Planck Institute for Foreign and International Social Law (Munich); President of the German Section of the International Society of Labour Law and Social Security.

Mr. Cassio MESQUITA BARROS (Brazil),

Independent lawyer specializing in labour relations (Sao Paulo); Titular Professor of Labour Law at the Law School of the public University of Sao Paulo and the Law School of the private Pontifical Catholic University of Sao Paulo; Founder and President of the Centre for the Study of International Labour Standards, attached to the University of Sao Paulo; Academic Adviser, San Martin de Porres University (Lima); winner of the medal for "Honra ao Merito de Trabalho" awarded by Decree of the President of the Republic for a contribution to the development of labour law; winner of the medal for "Honra ao Merito Judiciario do Trabalho" awarded by the Higher Labour Tribunal for his contribution to the administration of justice; honorary member of the Association of Labour Lawyers; Honorary President of the "Asociación Iberoamericana de Derecho del Trabajo y Seguridad Social" (Buenos

Aires, Argentina); Honorary President of the "Academia Nacional do Direito do Trabalho" (Rio de Janeiro) (composed of Brazilian experts in labour law); member of the International Academy of Jurisprudence and Comparative Law (Rio de Janeiro) and the International Academy of Law and Economy (Sao Paulo); honorary member of the Lawyers Council of Sao Paulo.

Mr. Benjamin Obi NWABUEZE (Nigeria),

LLD (London); Hon. LLD (University of Nigeria); Senior Advocate of Nigeria; 1980 Laureate of the Nigerian National Merit Award; former Professor of Law at the University of Nigeria; former Professor and Dean of the Faculty of Law at the University of Zambia; former member of the Governing Council, Nigerian Institute of International Affairs; Fellow of the Nigerian Institute of Advanced Legal Studies; former member, Council of Legal Education; former Minister of Education for Nigeria; former Constitutional Adviser to the Government of Kenya (1992), Ethiopia (1992) and Zambia (1993).

Mr. Edilbert RAZAFINDRALAMBO (Madagascar),

Honorary First President of the Supreme Court of Madagascar; former President of the High Court of Justice; former Professor of Law at the University of Madagascar; former Arbitrator of the ICSID and of the International Civil Aviation Organization; former member of the International Council for Commercial Arbitration; former member of the International Court of Arbitration of the International Chamber of Commerce; former judge of the Administrative Tribunal of the ILO; Alternate Chairman of the Staff Committee of Appeals, African Development Bank; former Vice-Chairman of the United Nations International Law Commission.

Mr. Miguel RODRIGUEZ PIÑERO Y BRAVO FERRER (Spain),

Doctor of Law; Permanent State Councillor; Professor of Labour Law; Doctor *honoris causa* of the University of Ferrara (Italy); President Emeritus of the Constitutional Court; President of the Spanish Association of Labour Law and Social Security; member of the European Academy of Labour Law and the Ibero-American Academy of Labour Law; Director of the review *Relaciones laborales*; former President of the National Advisory Commission on Collective Agreements and President of the Andalucian Industrial Relations Council; former Dean of the Faculty of Law of the University of Seville; former Director of the University College of La Rábida.

Mr. Amadou SÔ (Senegal),

Magistrate; Judge of the Constitutional Court; former President of the Labour Tribunal of Dakar; former Director of the Judicial Services; former Court President at the Court of Appeal; former Secretary-General of the Supreme Court; former Section President at the Supreme Court; former Lecturer on labour law at the Administrative Training and Further Training Centre (CFPA) and the National School of Administration and Magistracy (ENAM).

Mr. Boon Chiang TAN (Singapore),

BBM, PPA, LLB (London), Dip. Arts; Barrister-at-Law and Solicitor, Singapore; former President of the Industrial Arbitration Court of Singapore; former member of the Court and Council of the University of Singapore; former Vice-President (Asia) of the International Society of Labour Law and Social Security.

Mr. Fernando URIBE RESTREPO (Colombia),

Barrister-at-Law; former member of the Supreme Court of Justice of Colombia; former President of the Court of Justice of the Cartagena Accord; former President of the Supreme Court of Colombia; former Professor of International Labour Law at the National University of Colombia; former Professor of Labour Law, Universities *Externado de Colombia* and *Pontificia Javeriana*; former Professor of Philosophy of Law at the Bolivariano University of Medellín.

Mr. Jean-Maurice VERDIER (France),

Professor Emeritus at the University of Paris X; Honorary President of the University of Paris X; Honorary Dean of the Faculty of Law and Economics; former Director of the Institute for Research on Enterprises and Industrial Relations of the University of Paris X (associate of the National Centre for Scientific Research); former Director of the Institute of Labour Social Sciences, University of Paris I; Vice-President of *Libre Justice*, the French section of the International Commission of Jurists; former Professor at the Faculties of Law and Economics at Tunis (1956-61) and Algiers (1965-68); former President and Honorary President of the International Society of Labour Law and Social Security; former President and Honorary President of the French Association of Labour and Social Security Law.

Mr. Budislav VUKAS (Croatia),

Professor of Public International Law at the University of Zagreb, Faculty of Law; member of the International Tribunal for the Law of the Sea; member of the Institute of International Law; member of the OSCE Court of Conciliation and Arbitration; member of the International Council of Environmental Law; member of the Commission on Environmental Law of the International Union for Conservation of Nature and Natural Resources; former member of the Permanent Court of Arbitration.

Sir John WOOD (United Kingdom),

CBE, LLM; FRC Psych (Hon); Barrister; Chairman of the Central Arbitration Committee.

Mr. Toshio YAMAGUCHI (Japan),

Honorary Professor of Law at the University of Tokyo, Professor of Law at Kanagawa University; Chairman of the Central Labour Relations Commission of Japan; former member of the Executive Committee of the International Society of Labour Law and Social Security; full member of the International Academy of Comparative Law.

4. The Committee noted with regret that Baron von Maydell and Mr. Uribe Restrepo were not able to participate in its work.

5. The Committee elected Sir William DOUGLAS to the Chair and it elected Mr. E. RAZAFINDRALAMBO as Reporter of the Committee.

6. In pursuance of its terms of reference, as revised by the Governing Body at its 103rd Session (Geneva, 1947), the Committee was called upon to examine:

(i) the annual reports under article 22 of the Constitution on the measures taken by Members to give effect to the provisions of the Conventions to which they are parties, and the information furnished by Members concerning the results of inspection;

(ii) the information and reports concerning Conventions and Recommendations, communicated by Members in accordance with article 19 of the Constitution;

(iii) information and reports on the measures taken by Members in accordance with article 35 of the Constitution.

7. The Committee, after an examination and evaluation of the above reports and information, drew up its present report, consisting essentially of the following three parts: Part One is the General Report in which the Committee reviews general questions concerning international labour standards and related instruments and their implementation. Part Two contains observations concerning particular countries on the application of ratified Conventions (see section I and paragraphs 144 to 186 below), on the application of Conventions in non-metropolitan territories (see section II and paragraphs 144 to 186 below), and on the obligation to submit instruments to the competent authorities (see section III and paragraphs 187 to 197 below). Part Three, which is published in a separate volume (Report III (Part 1B)) consists of a General Survey on the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983, on which governments were requested to submit reports under article 19 of the Constitution of the ILO.

8. In carrying out its task, which consists of indicating the extent to which the situation in each State appears to be in conformity with the Conventions and the obligations undertaken by that State by virtue of the ILO Constitution, the Committee has followed the principles of independence, objectivity and impartiality set forth in its previous reports. It has continued to apply the working methods recalled in its 1987 report. A spirit of mutual respect, cooperation and responsibility has consistently prevailed in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards, whose proceedings the Committee takes fully into consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in respect of specific matters concerning the way in which States fulfil their standards-related obligations.

9. In this context, the Committee again noted the participation of the Chairman of its 67th Session as an observer in the general discussion of the Committee on the Application of Standards of the 85th Session of the International Labour Conference (June 1997). It noted the decision of the above-mentioned Committee again to request the Director-General to invite the Chairman of the 68th Session of the Committee of Experts on the Application of Conventions and Recommendations to attend as an observer the general discussion of the Committee on the Application of Standards of the 86th Session of the International Labour Conference (June 1998). The Committee accepted the invitation.

II. General

Membership of the Organization

10. Since the Committee's last session, the number of member States of the ILO has remained unchanged at 174.

New standards adopted by the Conference in 1997 and the coming into force of a Convention

11. The Committee noted that at its 85th Session (June 1997) the International Labour Conference adopted the Private Employment Agencies Convention (No. 181) and Recommendation (No. 188). These new standards revise the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96).

12. The Prevention of Major Industrial Accidents Convention, 1993 (No. 174), ratified by Sweden and Armenia came into force on 3 January 1997.

Ratifications and denunciations

13. The list of ratifications by Convention and by country[1] indicates a total of 6,390 ratifications as at 31 December 1996. At the end of the Committee's session on 12 December 1997, 80 ratifications had been received from 35 countries, bringing the total to 6,470.

14. The Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81), has been ratified by Finland and Sweden, and will enter into force on 9 June 1998.

15. Since the Committee's last session, the Director-General has registered ten denunciations accompanied by the ratification of a revising Convention. The Minimum Age (Industry) Convention, 1919 (No. 5), the Minimum Age (Sea) Convention, 1920 (No. 7), the Minimum Age (Agriculture) Convention, 1921 (No. 10), the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15), and the Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33), were denounced by Argentina following ratification of the Minimum Age Convention, 1973 (No. 138). The Minimum Age (Industry) Convention, 1919 (No. 5), was denounced by Bolivia following ratification of the Minimum Age Convention, 1973 (No. 138). The Minimum Age (Industry) Convention, 1919 (No. 5); the Minimum Age (Sea) Convention, 1920 (No. 7); the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15); the Minimum Age (Sea) Convention (Revised), 1936 (No. 58), and the Minimum Age (Fishermen) Convention, 1959 (No. 112), were denounced by Denmark following ratification of the Minimum Age Convention, 1973 (No. 138). The Safety Provisions (Building) Convention, 1937 (No. 62), was denounced by Finland following ratification of the Safety and Health in Construction Convention, 1988 (No. 167). The Minimum Age (Sea) Convention, 1920 (No. 7), and the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15), were denounced by Malaysia (Sarawak) following ratification of the Minimum Age Convention, 1973 (No. 138). The Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15), was denounced by Malaysia (Sabah) following ratification of the Minimum Age Convention, 1973 (No. 138). The Minimum Age (Industry) Convention, 1919 (No. 5), and the Minimum Age (Agriculture) Convention, 1921 (No. 10), were denounced by Slovakia following ratification of the Minimum Age Convention, 1973 (No. 138). The Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15), and the Minimum Age (Sea) Convention (Revised), 1936 (No. 58), were denounced by Cyprus following ratification of the Minimum Age Convention, 1973 (No. 138).

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[1] International Labour Conference, 85th Session, Geneva, 1997, Report III (Part 2).

16. With regard to a non-metropolitan territory, the United Kingdom made a declaration on behalf of the Isle of Man of the applicability without modifications of the Labour Relations (Public Service) Convention, 1978 (No. 151).

17. Two denunciations not accompanied by the ratification of a Convention were registered from Chile. The Maternity Protection Convention, 1919 (No. 3), was denounced in accordance with the invitation made by the Governing Body on the basis of recommendations made by the Working Party on the Policy regarding the Revision of Standards for countries having ratified the Maternity Protection Convention (Revised), 1952 (No. 103). The Underground Work (Women) Convention, 1935 (No. 45), was denounced in accordance with the provisions of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and in keeping with established practice and with the Government of Chile's firm and progressive policy of equality of treatment and non-discrimination between men and women.

18. A denunciation not accompanied by the ratification of a revising Convention was also registered from Finland for the Underground Work (Women) Convention, 1935 (No. 45). The Government stated that the denunciation of the Convention was due to the fact that the provisions of the Convention did not correspond to the Finnish policy on equality between the sexes and to the fact that Finland had ratified the Safety and Health in Mines Convention, 1995 (No. 176), on 23 May 1997. The Finnish National ILO Committee was in favour of the denunciation.

19. A denunciation not accompanied by the ratification of a revising Convention was registered from Peru for the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), and the Underground Work (Women) Convention, 1935 (No. 45). The Government stated that these denunciations were approved following Legislative Resolution No. 26726, dated 14 December 1996 and promulgated on 27 December 1996 and resulted from the application of article 2, subparagraph 2, of the Political Constitution of Peru which enshrines "equality before the law, according to which no one shall be the subject of discrimination on the basis of origin, race, sex, language, religion, opinion, economic status or any other grounds". Prior to the decision to denounce, consultations were held on the matter with the social partners.

Constitutional and other procedures

20. The Committee was informed of the following decisions taken by the Governing Body in cases involving recourse to the constitutional procedures of complaint and representation and other procedures.

A. Complaint submitted under article 26 of the ILO Constitution

Complaint against Myanmar

21. At the 83rd Session of the International Labour Conference (June 1996), a complaint was submitted by 25 Worker delegates under article 26 of the Constitution concerning the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29). At its 268th Session (March 1997), the Governing Body noted the existence of contradictions between the facts presented in the allegations and those set out in observations made by the Government of Myanmar in its response to the allegations. It therefore decided to establish a Commission of Inquiry composed of Sir William Douglas (Chairperson), Justice P.N. Bhagwati and Ms. Robyn Layton.

22. The first meeting of the Commission took place in Geneva from 9-11 June 1997 and the second meeting took place in Geneva from 17-26 November 1997.

B. Representations submitted under article 24 of the ILO Constitution

Representation concerning Brazil

23. At its 268th Session (March 1997), the Governing Body adopted the report of the tripartite committee set up to examine the representation made by the Trade Union of Workers of the Construction and Furniture Industries of Santos, alleging non-observance by Brazil of the Termination of Employment Convention, 1982 (No. 158).

Representation concerning Congo

24. At its 268th Session (March 1997), the Governing Body adopted the report of the tripartite committee set up to examine the representation submitted by the Trade Union Confederation of Congo Workers (CSTC), alleging non-observance by Congo of the Protection of Wages Convention, 1949 (No. 95).

Representation concerning Denmark

25. At its 268th Session (March 1997), the Governing Body decided that the representation submitted on behalf of the Association of the SiD at Ri-bus in Esbjerg, the Association of Dustmen in Århus, the Joined Association at Gate Gourmet, the Association of Scaffolders in Århus, the Joined Pedagogic Associations of Tårnby and Dragør, the Association of Workers of the Danish Socialist People's Party, the National Association of Workers of the Danish Socialist People's Party and the Association of Brewers at the Ceres Breweries in Århus alleging non-observance by Denmark of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), was receivable. The Governing Body referred the representation to the Committee on Freedom of Association.

Representation concerning Greece

26. At its 268th Session (March 1997), the Governing Body adopted the report of the tripartite committee set up to examine the representation made by the Federation of the Associations of Public Servants of the Ministry of Labour of Greece alleging non-observance by Greece of the Labour Inspection Convention, 1947 (No. 81).

Representation concerning Hungary

27. At its 270th Session (November 1997), the Governing Body decided that the representation made by the Federation of Workers' Council alleging the non-observance by Hungary of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Employment Policy Convention, 1964 (No. 122), was receivable. The Governing Body set up a tripartite committee to examine the representation.

Representation concerning Mexico

28. At its 270th Session (November 1997), the Governing Body decided that the representation made by the Trade Union Delegation, D-III-57, section XI of the National Trade Union of Education Workers (SNTE), Radio Education alleging the non-observance by Mexico of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), was receivable. The Governing Body set up a tripartite committee to examine the representation.

Representation concerning Peru

29. At its 270th Session (November 1997), the Governing Body decided that the representation made by the *Confederación General de Trabajadores del Perú* (CGTP) alleging non-observance by Peru of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), was receivable. The Governing Body set up a tripartite committee to examine the representation.

Representation concerning the Russian Federation

30. At its 270th Session (November 1997), the Governing Body adopted the report of the tripartite committee set up to examine the representation made by Education International (EI) and the Education and Science Employees' Union of Russia (ESEUR) alleging the non-observance by the Russian Federation of the Protection of Wages Convention, 1949 (No. 95). The Governing Body further requested the Director-General to propose technical assistance by the Office to the Government of the Russian Federation.

Representation concerning Senegal

31. At its 270th Session (November 1997), the Governing Body adopted the report of the tripartite committee set up to examine the representation made by the Syndicat unique et démocratique des enseignants du Sénégal (SUDES) alleging non-observance by Senegal of the Abolition of Forced Labour Convention, 1957 (No. 105).

Representation concerning Spain

32. At its 270th Session (November 1997), the Governing Body decided that the representation made by the General Labour Confederation of the Republic of Argentina alleging the non-observance by Spain of the Migration for Employment Convention (Revised), 1949 (No. 97), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Employment Policy Convention, 1964 (No. 122), was receivable. The Governing Body set up a tripartite committee to examine the representation.

Representations concerning Turkey

33. At its 268th Session (March 1997), the Governing Body adopted the report of the tripartite committee set up to examine the representation made by the Confederation of Turkish Trade Unions (TÜRK-IŞ) alleging non-observance by Turkey of the Termination of Employment Convention, 1982 (No. 158).

34. At its 270th Session (November 1997), the Governing Body decided that a report on the receivability of the representation made by the Confederation of Turkish Trade Unions (TÜRK-IŞ) alleging non-observance by Turkey of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), should be established in light of further developments in the ongoing procedure and in light of comments made by the Committee of Experts in this report.

Representation concerning Uruguay

35. At its 270th Session (November 1997), the Governing Body adopted the report of the tripartite committee set up to examine the representation made by the Latin

American Central of Workers (CLAT) alleging non-observance by Uruguay of the Occupational Safety and Health Convention, 1981 (No. 155).

Representation concerning Venezuela

36. At its 268th Session (March 1997), the Governing Body adopted the report of the tripartite committee set up to examine the representation made by the Venezuelan Workers' Confederation (CTV), the Single Central Organization of Workers of Venezuela (CUTV), the General Confederation of Workers of Venezuela (CGT), the Confederation of Autonomous Trade Unions (CODESA) and the National Trade Union of Public Employees and Officials of the Judiciary and of the Council of the Magistracy (ONTRAT), alleging non-observance by Venezuela of the Protection of Wages Convention, 1949 (No. 95), and the Termination of Employment Convention, 1982 (No. 158).

Representation concerning the Socialist Federal Republic of Yugoslavia

37. The Committee noted previously that the tripartite committee established to examine the representation submitted by the International Confederation of Free Trade Unions (ICFTU), alleging non-observance by the Socialist Federal Republic of Yugoslavia of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), submitted its report to the 253rd (May-June 1992) Session of the Governing Body. The Governing Body has suspended examination of this representation, pending a possible stance by the United Nations which would make it possible for some defendant to be identified for the purposes of the application of article 7 of the Standing Orders governing the procedure for the examination of representations submitted under articles 24 and 25 of the ILO Constitution.

* * *

38. The Committee noted that at the 271st Session of the Governing Body (March 1998), the Governing Body Committee on Legal Issues and International Labour Standards will begin consideration of the possible revision of the procedure governing representations submitted under article 24 of the Constitution taking into account the significant recourse made to that procedure in recent years.

C. Special procedures concerning freedom of association

39. At each of its last meetings (March, June and November 1997), the Committee on Freedom of Association had before it an average of 100 cases concerning nearly 50 countries from all parts of the world, in which it presented interim or final conclusions, or cases of which the examination has been adjourned pending the arrival of information from governments (306th to 308th Reports). Some of these cases have been before the Committee on several occasions. Moreover, since the last meeting of the Committee of Experts, about 50 new cases have been submitted to the Committee on Freedom of Association.

40. The Committee on Freedom of Association drew the attention of the Committee of Experts to the legislative aspects of the following cases: 1773 (Indonesia), 1796 (Peru), 1843 (Sudan), 1862 (Bangladesh), 1872 (Argentina), 1877 (Morocco), 1884 (Swaziland), 1891 (Romania), 1898 (Guatemala), 1899 (Argentina), 1900 (Canada), 1902 (Venezuela), 1904 (Romania), 1921 (Niger) and 1923 (Croatia).

50th anniversary of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and of the Universal Declaration of Human Rights

A. 50th anniversary of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

41. At its San Francisco Conference, the representatives of governments, employers and workers from the 40 member States which then constituted the International Labour Organization adopted, on 9 July 1948, by 127 votes in favour, zero votes against and 11 abstentions, Convention No. 87 on freedom of association and protection of the right to organize. The celebration of the 50th anniversary prompts the Committee today to assess the impact of half a century of freedom of association protection.

Status of ratifications

42. As of 12 December 1997, Convention No. 87 had been ratified by 120 member States of the ILO. While this is a high number of ratifications, unfortunately it remains insufficient. Since the Committee prepared its sixth General Survey on freedom of association and collective bargaining in 1994, the number of member States has increased from 170 to 174, and the number of ratifications of Convention No. 87 has continued to increase, from 109 to 120. Although the call of the Copenhagen World Social Summit in March 1995 and the repeated action of the Director-General to promote the ratification of the seven fundamental Conventions, including Convention No. 87, by the member States has borne fruit, there remain 54 member States that have not yet ratified the Convention.[2] Some are very industrialized countries while others are not. These countries represent a variety of industrial relations systems, some being very advanced while in others there is not even any recognition of the fundamental principles of freedom of association. The Committee must underline in particular that a large number of the most populated countries have not yet ratified this fundamental Convention, affecting more than half of workers and employers worldwide. This gives rise to considerable concern. The Committee, therefore, addresses an urgent appeal on the occasion of this 50th anniversary to those governments that have not yet ratified the Convention to do so. The Committee recalls that freedom of association is an essential objective of the Organization which is recognized in its Constitution and is the basis of tripartism. The Committee stresses in addition that the Declaration of Philadelphia, adopted in 1944 and incorporated into the Constitution two years later, recognizes the clear link between civil liberties and trade union rights in proclaiming that freedom of expression and of association is essential to sustained progress. The Committee, therefore, expresses its firm hope that, in the near future, there will be significant progress regarding the ratification of Convention No. 87.

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[2] There are in particular 38 countries that have been Members of the ILO for at least 20 years, namely, Afghanistan, Angola, Bahamas, Bahrain, Brazil, Cambodia, Chili, China, Democratic Republic of the Congo, El Salvador, Fiji, Guinea-Bissau, India, Indonesia, Islamic Republic of Iran, Iraq, Jordan, Kenya, Lao People's Democratic Republic, Lebanon, Libyan Arab Jamahiriya, Malawi, Malaysia, Mauritius, Morocco, Nepal, New Zealand, Papua New Guinea, Qatar, Saudi Arabia, Singapore, Somalia, Sudan, United Republic of Tanzania, Thailand, Uganda, United Arab Emirates and United States.

Progress achieved

43. For the ILO, the ratification of a Convention is only the first step in its implementation; the essential part of the process is clearly its application in law and in practice. Fortunately, a significant number of questions regarding Convention No. 87 that had been the subject of comment by the supervisory bodies of the ILO for many years have been, or are in the process of being, resolved. Over the 50-year period, the Committee has expressed its satisfaction in more than 110 cases with respect to the measures taken by 67 governments from all regions of the world aimed at introducing modifications necessary to improve, in law and in practice, the application of the Convention. During the last decade, the number of cases of progress has increased considerably, growing by more than 60 since 1987.

44. The suppression of a legally imposed trade union monopoly and the abolition of the directing role of the party under the government rule represent without doubt the most frequent cases of progress regarding the application of the Convention during these last years. Other improvements achieved relate to the re-establishment of freedom of association following the lifting of a state of emergency and the return to the rule of law and democracy in countries that had been under dictatorships. There has also been an expansion of the right of association in a number of countries: public employees, nurses, teachers, employees of religious or charitable institutions, fire-fighters, homeworkers, domestic workers, rural workers, seafarers, workers in the informal sector and foreign workers have been granted the right of association that had long been denied them.

45. Other progress is evident in the lifting of restrictions on the right of workers' and employers' organizations to elect their representatives freely. A significant number of legislative changes have been introduced aimed at ensuring that there is no longer undue interference regarding eligibility, election procedures and the discharge of trade union officials. The right of trade unions to draw up their rules and to organize their administration and activities has also been marked by positive developments. In certain countries, the administrative supervision of trade unions has been withdrawn, or wide powers of control or inquiries of the authorities into union activities, trade union meetings or the management of union funds, have been lifted. In some cases, the general prohibition of strikes has been revoked and the penalty of imprisonment for strike-related activities removed. Legal avenues of administrative dissolution have been closed. Private and public sector unions have achieved the right to join federations and confederations. Finally, the right to affiliate with international organizations of their own choosing without interference of the public authorities has been granted to occupational organizations in a number of countries.

46. The Committee can only hope that these favourable developments will continue and grow. This appreciable progress is the fruit, not only of persistent and continual dialogue of the Committee and the tripartite Conference Committee with the governments, but also of the patient work of the Committee on Freedom of Association of the ILO Governing Body. The community of ideas that should flow between the three supervisory bodies will ensure continuing progress.

47. Despite such considerable advances in the implementation of the Convention, serious problems still remain in achieving its full application.

Long-standing difficulties and new obstacles

Trade union monopoly or right to establish the organization of one's own choosing

48. Imposed trade union monopoly was identified during the drafting of the Convention as one of the significant obstacles to freedom of association. It was as clear then as it is today that the right of employers and workers to establish and join organizations of their own choosing is in no way intended to assume a position favouring either the theory of the single organization or that of plurality of organizations, but rather that the choice should rest with those directly concerned. Despite the progress achieved in this area, the problem of trade union monopoly imposed directly or indirectly by law persists in some countries and is, in certain cases, one of the principal obstacles to the ratification of Convention No. 87. Legislatively imposed trade union monopolies have forced some independent trade unions underground or into exile. In other cases, it has been observed that some organizations which worked within the framework of a monopolistic system, have later been dissolved by administrative authority and their leaders arrested and detained for pursuing their members' interests in a manner independent of the government authorities. Such situations reinforce the continuing relevance of the 1952 International Labour Conference resolution concerning the independence of the trade union movement and the fundamental importance of ensuring a labour relations system which allows for trade union pluralism, if desired by those concerned.

Restrictions for certain categories of workers and sectors of activity

49. At the time of the adoption of the Convention, public servants were restricted with respect to their right to organize in several regions of the world. It was therefore clearly indicated in the *travaux préparatoires* that the guarantee of the right of association should apply to all employers and workers in the public or private sectors including public servants and high-level officials as well as workers in state-owned industries. While, as noted above, several countries have since guaranteed the right to organize to public servants, this right remains restricted in a number of member States and has been cited by some of them as an impediment to ratification. Furthermore, the right to organize of all workers without distinction whatsoever continues to raise difficulties in some countries which still limit this right for agricultural workers, domestic workers, seafarers, fire-fighters, prison staff and sometimes for foreign workers.

The right to strike

50. Restrictions continue to be placed on the means which can be used by workers' organizations for the furtherance and defence of their members' interests. This is particularly flagrant with respect to the right to strike. In some countries this right is still subject to a general prohibition or is prohibited in a large number of sectors which cannot be considered essential. Some legislation grants broad powers to public authorities to impose compulsory arbitration or imposes excessive conditions rendering strikes virtually impossible. Moreover, sometimes such legislation also imposes penal sanctions for legitimate and peaceful strike action.

The significance of freedom of association in a globalizing world economy

51. In the last decade, new situations have given rise to restrictions in respect of freedom of association for certain workers. The most notable of these concerns the creation of export processing zones. In several countries EPZs are either explicitly excluded from national labour legislation or are covered by specific regulations expressly excluding the right to organize and/or the right to strike. Unfortunately, the number of workers in EPZs affected by such legislation is increasing given the current practice of competitive economies within the context of globalization.

52. The globalization of trade also renders restrictions on trade union affiliation and restrictions concerning nationality for election to trade union office all the more disturbing. Even though there is an increasing number of migrant workers around the world, their right to organize and the possibility for their election to posts within the union leadership are called into question in certain countries. Such restrictions have been invoked by certain governments as an obstacle to the ratification of the Convention.

53. Finally, the world labour market also highlights the relevance of the right to affiliate to an international organization of employers or workers. Representation at the international level with a global perspective has always been of fundamental importance to the trade union movement. Thus, when taking into account the increased vulnerability of displaced workers, as well as the complexity of legal and social issues to be faced by multinational enterprises, the right to affiliate to international organizations is more important than ever and every effort must be taken to guarantee respect for it.

54. While globalization and its repercussions on trade union rights could not be foreseen at the time of adoption of Convention No. 87, the Committee has not ceased to recall the universal nature of the standards laid down in the Convention.

55. In conclusion, the Committee welcomes the considerable progress made since the adoption of Convention No. 87 towards ensuring the respect of its provisions. While noting that, in several cases, results have been obtained with the technical assistance of the Office and given that there are important obstacles remaining to the full application of the Convention, the Committee invites the governments concerned to avail themselves of such technical assistance in order to identify the problems hindering the application and/or the ratification of the Convention, thus exploring new approaches towards the resolution of these problems.

B. 50th anniversary of the Universal Declaration of Human Rights

56. The year 1998 is also the 50th anniversary of the Universal Declaration of Human Rights, which was adopted on 10 December 1948, a few months after Convention No. 87. The Universal Declaration is now considered to reflect customary international law. It is generally accepted as a point of reference for human rights throughout the world, and as the basis for most of the standard setting that has been carried out in the United Nations and in many other organizations since then.

57. The ILO's standards and practical activities on human rights are closely related to the universal values laid down in the Declaration, and are entirely consistent with it. Except for the Forced Labour Convention, 1930 (No. 29), all of the ILO's fundamental human rights Conventions were adopted either at the same time as the Declaration or in the years closely following it, and all are in conformity with the philosophy and principles laid down in that important document.

58. Most important, the ILO's standards on human rights along with the instruments adopted in the UN and in other international organizations give practical application to the general expressions of human aspirations made in the Universal Declaration, and have translated into binding terms the principles of that noble document. The Universal Declaration reflects in turn many of the principles laid down in the ILO's own Declaration of Philadelphia adopted in 1944 and incorporated into the Constitution of 1946. The fact that the ILO instruments on the human rights that fall within its mandate have been so widely ratified is further evidence of the degree to which they reflect the universal values laid down in the Declaration.

59. It is not only those instruments which the ILO has designated "human rights" which apply the precepts of the Universal Declaration. Clearly Article 4 of the Universal Declaration on slavery and servitude is implemented under the ILO's Conventions on forced labour, and the prohibition of discrimination in Article 7 finds application in ILO standards on discrimination in employment and occupation. The statement in Article 23, paragraph 4, that "Everyone has the right to form and to join trade unions for the protection of his interests" relates even more directly to the ILO's standards on freedom of association. The Universal Declaration also brings into the sphere of human rights many of the subjects that the ILO has dealt with in its own framework of "social justice", including the right to social security in Article 22, the right to decent conditions of work in Article 23, the right to rest and leisure and a limit on working hours and holidays in Article 24, and other rights.

60. The Committee therefore reaffirms its appreciation of the important step taken by the United Nations in 1948 when it adopted the Universal Declaration, and celebrates the impact this document has had on the achievement of human rights and social justice in the world since then. The Committee will continue, as it always has done, to keep the Universal Declaration's precepts in mind as it carries out its own tasks.

Functions in regard to other international instruments of universal and regional character

A. United Nations treaties concerning human rights

61. The Office regularly sends written reports and submits oral information, in accordance with existing arrangements with each one of them, to the various bodies responsible for the application of United Nations Conventions that are relevant to the ILO's mandate. These bodies constitute the supervisory machinery established by the United Nations to examine reports which governments are required to submit at regular intervals on each of the UN treaties that they have ratified. Since the Committee's last meeting, the following activities have been undertaken:

- *International Covenant on Economic, Social and Cultural Rights*: the Office took part actively in the 16th (April-May 1997) and 17th (November-December 1997) Sessions of the Committee on Economic, Social and Cultural Rights, presenting reports on six countries at each session.
- *International Covenant on Civil and Political Rights*: reports were presented on six countries for the 59th (March-April 1997), on five countries for the 60th (July-August 1997), and on six countries for the 61st (October-November 1997) Sessions of the Human Rights Committee.
- *Convention on the Elimination of All Forms of Discrimination against Women*: a report on ten countries was submitted for the 17th (July 1998) Session of the

Committee on the Elimination of Discrimination against Women which has now changed to a cycle of two sessions per year.

- *International Convention on the Elimination of All Forms of Racial Discrimination*: reports were presented to the 50th (March 1997) and 51st (August 1997) Sessions of the Committee on the Elimination of Racial Discrimination on five and 13 countries respectively, and the Office had contacts with CERD members during the UN Training Course on National Legislation and Racial Discrimination (June 1997).
- The Office was represented at the eighth meeting of chairpersons of UN treaty bodies (September 1997) and made a statement concerning closer cooperation between the UN treaty bodies and the ILO's reporting, in particular concerning better use of the information provided in the ILO reports.

62. In accordance with Article 45 of the *United Nations Convention on the Rights of the Child*, the Office was represented at the 14th Session (6-24 January 1997), 15th Session (20 May-6 June 1997) and 16th Session (23 September-10 October 1997) of the Committee on the Rights of the Child. At 12 December 1997, only the United States and Somalia have not ratified this instrument. Following usual practice, the Committee examined the first reports of the following countries: Bulgaria, Ethiopia, Myanmar, New Zealand, Panama, Syrian Arab Republic (14th Session); Algeria, Azerbaijan, Bangladesh, Cuba, Ghana, Paraguay (15th Session); Australia, Czech Republic, Lao People's Democratic Republic, Togo, Trinidad and Tobago, Uganda (16th Session). The Committee invited States which have not ratified the Minimum Age Convention, 1973 (No. 138), to do so, and certain States (Ghana, Lao People's Democratic Republic, Panama, Trinidad and Tobago, Uganda) indicated their intention to study the possibility of ratifying this instrument in the near future. In addition, the Committee invited States which it had found to be experiencing difficulties in areas falling within the ILO's competence to request assistance of the Office. This information has been communicated to the competent departments at headquarters and in the regions in order to be taken into consideration.

63. The Office transmitted information and comments on the reports of countries reporting to the pre-sessional working group of the Committee on the Rights of the Child on the measures adopted to give effect to the Convention on the Rights of the Child. In this connection, it is important to recall that there are national bodies made up of representatives of the administrations concerned and of non-governmental organizations, which aim generally to promote the application of the Convention and propose measures to overcome difficulties in implementing it. In some countries, administrations whose remit covers labour, together with employers' and workers' organizations, have been invited to participate in the activities of these bodies. Their involvement can be of considerable significance in pointing the way for measures to abolish labour by children below a certain age and protect young people who work, in accordance with the provisions of international labour Conventions. It can also facilitate a review of policies concerning child labour, an assessment of their effects and, if need be, give them fresh impetus.

B. European Code of Social Security and its Protocol

64. In accordance with the supervisory procedure established under Article 74(4) of the Code, and the arrangements made between the ILO and the Council of Europe, the Committee of Experts examined 18 reports on the application of the European Code of Social Security and, as appropriate, its Protocol. It noted that the States parties to the Code and the Protocol continue in large measure to apply them. At the sitting in which the Committee examined the reports on the European Code of Social Security and its

Protocol, the Council of Europe was represented by Ms. Morales, Administrator of Social Security. The conclusions of the Committee regarding these reports will be sent to the Council of Europe.

65. In addition, a representative of the ILO took part, as technical adviser, in the meeting of the European Committee for Social Security of the Council of Europe (Strasbourg, May 1997). As in previous years, the European Committee approved the conclusions of the Committee of Experts.

66. Finally, the Committee was informed that the Netherlands had denounced, with effect from 17 March 1998, Part VI (Employment injury benefit) of the Code, as amended by the Protocol.

C. European Social Charter and Additional Protocol

67. In accordance with Article 26 of the European Social Charter, a representative of the ILO participated during the course of 1997 in an advisory capacity in several sessions of the Committee of Independent Experts set up to supervise the application of the Charter.

68. Furthermore, since the Committee's last meeting, Poland has ratified the European Social Charter. Ireland and Poland have ratified the Protocol amending the European Social Charter; Italy and Norway have ratified the Additional Protocol to the European Social Charter providing for a system of collective complaints.

Collaboration with other international organizations

Cooperation in the field of standards with the United Nations and the specialized agencies

69. In the context of the collaboration established with other international organizations on questions concerning the supervision of the application of universal instruments relating to subjects of common interest, copies of the reports received under article 22 of the Constitution were forwarded to the United Nations, specialized agencies, and intergovernmental organizations with which the ILO has entered into special arrangements for this purpose.

70. Thus, in accordance with established practice, copies of the reports received on the Indigenous and Tribal Populations Convention, 1957 (No. 107), and on the Indigenous and Tribal Peoples Convention, 1989 (No. 169) were forwarded for comment to the United Nations, the United Nations Food and Agriculture Organization (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO); copies of these reports were also sent to the Inter-American Indian Institute of the Organization of American States and to the United Nations Centre for Human Rights. Copies of reports on the Radiation Protection Convention, 1960 (No. 115), were transmitted to the International Atomic Energy Agency (IAEA). Copies of reports on the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), were sent to FAO, UNESCO and the United Nations. Copies of reports on the Rural Workers' Organisations Convention, 1975 (No. 141), were forwarded to FAO and the United Nations. Copies of reports on the Human Resources Development Convention, 1975 (No. 142), were sent to UNESCO. Copies of reports on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), were forwarded to the International Maritime Organization (IMO). A copy of a report on the Nursing Personnel Convention, 1977 (No. 149), was transmitted to WHO.

71. Representatives of these organizations were also invited to attend the sittings of the Committee of Experts in which the Conventions in question were discussed.

Matters relating to human rights

72. Following the ILO's participation in the World Conference on Human Rights (Vienna, June 1993), the World Summit for Social Development (Copenhagen, March 1995), the Fourth World Conference on Women (Beijing, September 1995) and the other international theme conferences organized recently, the Office has continued to respond in its regular promotional activities to the call in the Vienna Declaration and Plan of Action for universal ratification of international human rights treaties and to the Copenhagen Programme of Action's call for ratification and full implementation of ILO Conventions in the areas of the prohibition of forced and child labour, freedom of association, equal remuneration for men and women for work of equal value and non-discrimination in employment. The ILO has taken measures to implement the conclusions of all of them through its usual means of action, including standard setting and monitoring, technical cooperation, research, advisory services, information dissemination, seminars, workshops, publications and other promotional activities as outlined above.

73. The Committee recalls that the Governing Body decided, at its March-April 1995 session, to collect information on the ratification situation of the seven ILO Conventions dealing with fundamental human rights (Conventions Nos. 29 and 105, 87 and 98, 100 and 111, and 138) and, at its subsequent sessions, examined reports collating the replies of member States to the Director-General's letter calling for their universal ratification. This ongoing campaign has been very successful, with more than 70 new ratifications or confirmations of obligations previously applicable. The campaign continues, and the Office has been notified that a number of other ratifications are likely in the near future. In this regard, the Office has provided a significant amount of technical assistance to member States and to the other constituents, either through the multidisciplinary teams or directly from Geneva. The Committee hopes that the governments concerned will continue to make efforts to ratify these fundamental Conventions, and that the Office will continue to provide whatever assistance is necessary in this respect.

74. The ILO has been asked to contribute, along with other parts of the United Nations system, to a review of the progress accomplished by the ILO in the five years since the World Conference on Human Rights, referred to above, in implementing the Vienna Declaration and Programme of Action. This information is to be submitted to the Commission on Human Rights, ECOSOC and the General Assembly in 1998, and is being prepared in cooperation with the United Nations Office of the High Commissioner for Human Rights (formerly the UN Centre for Human Rights).

75. In the context of strengthening its technical advisory services on human rights, the Office has maintained collaboration with the UN's work through the Office of the High Commissioner for Human Rights. The Office has responded with written replies to the numerous requests for information received from the High Commissioner for Human Rights. It has also — through its International Training Centre, Turin — taken part in UN workshops on international human rights instruments reporting and has participated in joint briefing sessions with other United Nations agencies for country or thematic rapporteurs.

76. The Committee notes that in February 1997, the Office organized the first of what is contemplated as an annual series of briefings on the ILO's human rights work, immediately before the session of the United Nations Commission on Human Rights. The persons responsible for human rights questions in the missions in Geneva were invited, and more than 80 missions were represented. The Committee welcomes this effort to make the ILO's work on human rights better known, and welcomes the effort to incorporate ILO human rights concerns into the work of other international organizations.

77. Following the General Assembly's proclamation of 1994-2004 as the International Decade of the World's Indigenous People, the Office has contributed to the Decade by organizing its own events and by collaborating with the Office of the High Commissioner for Human Rights. The Office is providing technical backstopping to a Danish-funded project to promote the rights of indigenous and tribal peoples within the framework of relevant ILO standards, in particular the Indigenous and Tribal Peoples Convention, 1989 (No. 169). The ILO is also continuing its work, in conjunction with the ILO's San José Office, on the indigenous segment of the Guatemalan Peace Plan, signed in Oslo in 1994.

78. In the framework of the General Assembly's proclamation of 1995-2005 as United Nations Decade for Human Rights Education, the ILO has cooperated with the Office of the High Commissioner for Human Rights in its activities to promote human rights education methodologies, using, in particular, the ILO's extensive experience in employers' and workers' education and training.

79. The Committee notes with interest that, at its 270th Session (November 1997), the Governing Body decided to include on the agenda of the 86th Session of the Conference (June 1998) an additional item relating to the "consideration of a possible ILO Declaration of principles concerning fundamental rights, and its appropriate follow-up". The Committee has always welcomed any measures that would strengthen the ILO's ability to promote and protect the fundamental human rights which lie within its mandate, and to help member States to move towards the ratification of the ILO's Conventions on these subjects. The Committee considers that it may itself have a positive role to play in this regard, and looks forward to learning of the decisions which will be taken by the Governing Body and the International Labour Conference.

Questions concerning the application of Conventions

Application of the Conventions on labour inspection

80. Labour inspection should play an important role in the observance of fundamental rights such as the abolition of forced labour, including forced child labour, the application of provisions regarding minimum age for admission to employment or work of children, and non-discrimination in employment and occupation. An effective labour inspection should be an essential factor in the protection of the most vulnerable workers and for detecting clandestine labour. The Committee has emphasized inter alia in regard to the application of the Forced Labour Convention, 1930 (No. 29), that labour inspection should ensure compliance with the prohibition of forced labour and requested certain governments to supply detailed information, including on inspections conducted, violations recorded and proceedings engaged. The Committee invites governments to note in the official labour inspection reports breaches of national legislation and international labour standards concerning the application of Conventions on fundamental rights with a view to permitting a better appreciation of the effective application in practice of these Conventions.

Application of the Employment Policy Convention, 1964 (No. 122)

81. This year the Committee has concluded its examination of the application of the Convention during the period 1994-96 in 65 States and six non-metropolitan territories. In carrying out its task, it has again received the indispensable support of the ILO Employment and Training Department as well as substantial contributions, in the last two years, from the employment specialists of multidisciplinary teams. It notes with particular interest the information given by the Governments of China and India to the Conference Committee, that the ratification of the Convention by these countries was planned.

82. The Committee's examination of the reports and communications from employers' and workers' organizations has led it, in almost every case, to make individual comments, in the form of observations reproduced in the second part of this report, or direct requests. The reason for this is that the nature of the commitments made by the States which have ratified the Convention requires a continuing dialogue on the policies and measures adopted so as to ascertain whether those commitments are seriously pursued. An assessment of the manner in which an active policy to promote full, productive and freely chosen employment is declared and pursued, and in which the measures taken for that purpose are determined and kept under review within the framework of a coordinated economic and social policy, calls for a dynamic approach: the success of an employment policy which is consistent with the Convention depends to a large extent on adaptation to meet constantly changing circumstances. The Committee notes in this connection that, in the cases where the Governing Body has had to examine representations under article 24 of the Constitution alleging non-observance of the Convention, it has invariably asked for its recommendations to be followed up under the regular article 22 supervisory procedure. Furthermore, the treatment of the representations by the tripartite committees set up to examine them confirms the Committee's approach. The Committee welcomes this further confirmation of the complementarity of the various bodies concerned with the application of a Convention which addresses one of the major priorities of the ILO. It is with the same intent, and in order to nurture the constructive dialogue that it has established with the Conference Committee, that the Committee wishes to draw attention to the main lessons it draws from its examination of the reports.

83. There is no doubt but that economic globalization continues to have a profound impact on the formulation and application of an active employment policy in all countries which have ratified the Convention. In several developing countries the problems caused by structural adjustment and demographic growth are compounded by indebtedness. In Africa in particular, several governments state that the conditions created by structural adjustment are such that they are no longer able to apply a real employment policy, whereas such a situation in fact makes the need for such a policy even more imperative, in order at the very least to attenuate the negative effects of adjustment on employment and living standards. As for countries in transition to a market economy, some in Central and Eastern Europe especially appear to have overcome the recessive phase of transition: their problems and the policies they are conducting in the framework of the application of the Convention are coming increasingly to resemble those of industrialized market economy countries. In other countries in transition, however, despite the adoption of legislation establishing the right to work, the low unemployment rates recorded still mask large-scale underemployment in various forms. As for the Member States of the European Union, the available information seems to imply that attaining the objectives of the Convention will depend to a large extent on the as yet unknown impact of the expected developments in budgetary and monetary policy, and efforts to bring about a return to sustained economic growth. In this connection, the Committee pointed out that, under the terms of the treaty signed on 2 October 1997 in Amsterdam, the Member States of the European Union "shall regard promoting employment as a matter of common concern". It expresses the hope that their concern for the establishment of a single currency will not divert attention from the objectives of the Convention.

84. By concentrating, sometimes exclusively, on the description of active labour market policy measures, many governments would appear to be in danger of overlooking the fact that the major goal of full employment must be at the core of all economic and social policy and that, as the Governing Body pointed out when it adopted the revised report form for the Convention, an active employment policy involves other aspects of government action than those for which the Ministry of Labour has responsibility. Furthermore, it would be a mistake to regard the Convention only as an instrument to combat unemployment: in Article 1, by assigning to States parties the threefold objective of full employment, productive employment and freely chosen employment, the Convention is more demanding — even if it is left to each government, in consultation with the persons affected, to determine the measures needed to meet that objective.

85. It is in the light of this threefold objective that labour market policy measures must be evaluated so that any necessary adjustments can be made. In its examination of the reports on the application of the Convention, the Committee has noted in particular the risks inherent in some of these measures. The undue perpetuation of youth employment programmes or programmes for the long-term unemployed could lead to the development of a distinct "secondary" labour market with lesser conditions. The same is true of systematic incentives to withdrawal from the labour market. The examination of the reports and the information available shows that unemployment rates are lowest in the countries with the highest activity rates. The generalization of measures such as involuntary early retirement or measures which would indirectly have the effect of dissuading women from seeking employment would similarly be incompatible with the objectives laid down in Article 1. In this context, too extensive a definition of disability for the purpose of establishing entitlement to invalidity pensions would also be contrary to the principles of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), for as the Committee emphasizes in this year's General Survey of this instrument, the objective should be to enable disabled people too to find suitable employment. Attempts to find new sources of job creation in personal services for needs not yet covered, referred to by several governments, must also be viewed with caution: they should not have the effect of confining part of the active population to low-skilled, poorly paid, low-productivity jobs.

86. It is not the Committee's intention that the above remarks should be taken negatively. In many cases it has noted real progress, as can be seen from the observations in the second part of the report. It has also noted, in several of its comments, the significant contribution of ILO technical cooperation to the formulation of employment policy and its implementation. The Committee is fully aware of the growing difficulty of giving effect to the Convention and the determined efforts needed to ensure that it is fully applied, especially at a time when large structural changes take place. But full, productive and freely chosen employment will, for a long time yet, remain an essential dimension of the public interest, which is the responsibility of any democratic government.

Application of Conventions on child labour

87. The Committee, in the general observation on Convention No. 138 made at its November-December session in 1995, noted the growing interest in and concern over child labour among ILO constituents and the call for ILO action including in the field of the application of standards. It notes now that there have since been developments in the ILO's activities on different fronts. These include: the procedure initiated for the elaboration of new instruments on child labour through discussions at the International Labour Conference in 1998 and 1999; the International Programme on the Elimination of Child Labour (IPEC) which has been expanding in number of participating countries as well as donor countries and also the volume and range of its activities; ILO participation in several international conferences concerning child labour (for instance, Amsterdam in February, Oslo in October 1997), at each of which the importance of the ILO's standard setting was highlighted.

88. The Committee hopes that the supervisory activities of international labour standards regarding child labour will also contribute to national and international endeavours to eradicate child labour in practice through various measures, including the effective enforcement of appropriate legislative provisions. It is in this hope that the Committee has recently been raising questions on the application in practice of the Conventions on minimum age, even where national laws and regulations ensure legislative conformity with the provisions of the Conventions.

89. As to the sources of information on the application in practice of the minimum age Conventions, the Committee notes that sometimes the actual existence of children working in contravention of both the national law and international labour standards does not appear anywhere in the labour statistics or official records of labour inspection. It has noted this on several occasions when indications of the practice of child labour are supplied by governments to the United Nations Committee on the Rights of the Child. The Committee has also observed that only a few comments have so far been received from employers' and workers' organizations concerning the application of Conventions relating to child labour.

90. The Committee is concerned at this lack of information, especially, reliable data, which may suggest a lack of adequate monitoring by States of the existence and extent of child labour. It is also concerned that the failure of employers' and workers' organizations to make comments may allow the situation to remain uncorrected. The Committee would therefore encourage the increased involvement of all ILO constituents in overseeing the application of Conventions relevant to child labour, and in particular those concerning minimum age.

91. Recalling nonetheless the responsibility of governments to ensure the application of ratified Conventions in both law and practice, the Committee draws their urgent attention to the importance of effective enforcement of national legislation giving effect to these Conventions. It urges the governments to take all necessary measures for this purpose in cooperation with the social partners and, where appropriate, other bodies active in the field, such as non-governmental organizations, and to supply information on the action taken and results achieved.

Application of Conventions in export processing zones and enterprises

92. In its last report, the Committee noted with interest that a Special Action Programme had been created to consider *labour and social issues relating to export processing zones*, and that it would be looking into various aspects of the application of basic human rights and other Conventions in the zones. The Committee now notes that the Action Programme has pursued its work during the past year, with particular attention to questions of labour relations, workers' organizations and the position of women workers.

The Action Programme is expected to conclude with a tripartite meeting toward the end of 1998.

93. The Committee looks forward to learning of the findings and conclusions of the Action Programme, in particular so far as the clarification and guarantee of the implementation of ratified Conventions in the zones is concerned. In the meantime, the Committee has taken careful note of the views expressed in the Conference Committee on this subject and has continued to take into account particular information received from governments as to the application of individual Conventions. It hopes both that governments concerned will continue to supply details in this respect and that employers' and workers' organizations will communicate their own observations whenever appropriate.

III. Action concerning the elimination of forced labour

Special reports on the Forced Labour Convention, 1930 (No. 29) and on the Abolition of Forced Labour Convention, 1957 (No. 105), from countries that have not ratified them

94. The Governing Body decided at its 264th Session (November 1995), in the context of its discussion of the strengthening of the ILO's supervisory machinery, that the special procedure under article 19 of the Constitution for the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), would be extended to all seven basic human rights instruments. This is the first time this procedure is being used. Under it reports were requested this year from all countries which had not yet ratified the Forced Labour Convention, 1930 (No. 29), or the Abolition of Forced Labour Convention, 1957 (No. 105). (Reports will be requested annually, in turn, on Conventions Nos. 87 and 98 in 1998, on Conventions Nos. 100 and 111 in 1999, and on Convention No. 138 in 2000, and in 2001 the rotation begins again.) This procedure is intended to allow an examination outside the context of the General Surveys also conducted under article 19 of the Constitution, of the obstacles to ratification of these fundamental instruments, the prospects for their ratification, and the difficulties encountered in the absence of ratification. The present examination will also cover recent trends in the fields covered by these instruments, in national law and practice.

95. This procedure is conducted in parallel to the campaign launched by the Director-General in May 1995 for the ratification of these seven fundamental Conventions. It therefore takes account also of the information furnished in response to that campaign.

A. Ratification of the forced labour Conventions

96. These two Conventions are among the most widely ratified of all ILO Conventions; and indeed are among the most highly ratified of all the human rights Conventions adopted by the United Nations system. Convention No. 29 has now received 143 ratifications, and Convention No. 105 has received 129. This includes several countries which have undertaken obligations under these instruments since the ratification campaign was launched in May 1995, either by ratification or by confirming obligations applicable to them before they became independent States. These countries are the following:

- *Convention No. 29*: Botswana, El Salvador, Estonia, Georgia, Former Yugoslav Republic of Macedonia, South Africa, Turkmenistan and Uruguay.
- *Convention No. 105*: Albania, Belarus, Botswana, Burkina Faso, Croatia, Czech Republic, Estonia, Georgia, Mauritania, Slovakia, Slovenia, South Africa, Turkmenistan and United Arab Emirates.

97. These new ratifications, and the information spelled out below for the countries which are in the process of ratifying these instruments, indicates that it is possible for all countries to ratify these Conventions, which are among the most fundamental of all the instruments adopted by the ILO.

Information available

98. Reports were received from 13 of the 31 non-ratifying countries for Convention No. 29, and from 16 of the 46 non-ratifying countries for Convention No. 105 (see list in the Appendix). Information was also available from the responses to the ratification campaign on a number of other countries' intentions with regard to these instruments, as indicated in the table, so that in all information is available on 23 countries for Convention No. 29, and on 38 countries for Convention No. 105. There are a few countries for which no information is available from either source, and which have not ratified one or both of these instruments: *Convention No. 29*: Bolivia, Equatorial Guinea, Eritrea, Gambia, Malawi, Republic of Moldova; *Convention No. 105*: Bosnia and Herzegovina (report received which contained no information), Congo, Eritrea, Gambia, Lesotho, Malawi, Solomon Islands and Tajikistan.

99. When the Governing Body adopted this procedure, it contemplated information being submitted also by employers' and workers' organizations under article 23(2) of the Constitution. However, no information has been received from any employers' or workers' organization under the present procedure. It is of course up to these organizations whether they consider it useful to submit such information. The Committee must note however that in its absence, it has more restricted possibilities of examining the consequences that the lack of ratification may have had in the countries concerned, or of taking into account any views these organizations might have on the reasons put forward by the government for not ratifying. It hopes that these organizations will examine the utility of making reports under article 23(2) on future occasions.

Ratification prospects

100. Several governments have indicated that ratification is under way, and may be expected soon: *Convention No. 29*: Oman, Turkey, Uzbekistan and Zimbabwe; *Convention No. 105*: Kyrgyzstan, Lao People's Democratic Republic, Romania and Togo. Others have mentioned that preparations are well under way, and that the governments are working with the intention of ratifying shortly: *Convention No. 29*: Mongolia (sees no difficulty for ratification once the necessary preparatory work has been done); Rwanda (approval of ratification by the competent authority is awaited); *Convention No. 105*: Chile (a study has shown that the legislation is in line with the Convention and a bill for ratification will shortly be submitted to Parliament); Mongolia (as for Convention No. 29).

Obstacles to ratification mentioned by governments

101. Most of the governments from which information has been received have provided very summary information.

102. The following countries have indicated simply that they are examining ratification, with no indication being given of any difficulties they may be encountering: *Convention No. 29*: Armenia, Ethiopia, Latvia, Namibia, Philippines, Qatar, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Sao Tome and Principe; *Convention No. 105*: Armenia, Bahrain, Cambodia, Ethiopia, Japan, The former Yugoslav Republic of Macedonia, Myanmar, Nepal, Qatar, Saint Kitts and Nevis, Saint Vincent and the Grenadines, and Uzbekistan.

103. Several others have provided general indications that legislation needs to be brought into line with Convention No. 105 before ratification, but without giving more precise information: Azerbaijan, Indonesia, Madagascar, Namibia and Ukraine. Other countries have stated that the Office's assistance is desired in the examination of the national law and practice, in order to make a decision on ratification: *Convention No. 29*: Armenia, Republic of Korea (a national seminar is now being planned with the Office's assistance); *Convention No. 105*: Armenia, Russian Federation.

104. Other countries have mentioned more substantial problems in the way of ratification. These fall into several categories.

105. *Convention No. 29*: *Ratification of Convention No. 105 considered sufficient*. At an earlier stage of the ratification campaign, *Canada* had indicated that it considered that having ratified Convention No. 105, it was not necessary to ratify Convention No. 29. After discussions with the Office, the Government has now undertaken a serious examination of ratification of this Convention, and has posed some technical questions to the Office in relation to prison labour in particular (see below). *Mozambique* has replied in the same sense as Canada's original objection. The Committee points out, as it has done on previous occasions, that the two Conventions are complementary. While Convention No. 105 is the more recent instrument, it builds on the foundation laid down by Convention No. 29 to prohibit forced or compulsory labour in certain specific instances. Convention No. 29, on the other hand, lays down a general prohibition on forced and compulsory labour, admitting only a few exceptions. Generally speaking, a country which has already ratified Convention No. 105 should have fewer problems ratifying Convention No. 29, than if it has not previously ratified either Convention, as certain common basic standards and practices are likely already to be in place.

106. *Work as a condition for receiving benefits*. One country (Canada) has posed the question of whether a requirement that unemployed people perform some kind of work as a condition for receiving benefits, might constitute forced labour within the sense of Convention No. 29. The Committee recalls that the Convention defines forced or compulsory labour as "all work or service which is extracted from any person under the menace of any penalty"; as the Committee pointed out in its 1979 General Survey on this subject, the penalty "might take the form also of a loss of rights or privileges" (General Survey, paragraph 21). A basic distinction may thus be drawn between two situations. If, as in most countries, unemployment and other benefits are contingent upon the recipient having worked or contributed to an unemployment insurance scheme during some minimum period, and the length of time during which benefits are paid is linked to length of time the person concerned worked, then to impose after the fact an additional requirement of having to perform work to receive these benefits would constitute compulsory labour on pain of losing benefits to which the person was entitled. However, if the benefits concerned are not an entitlement based on previous work or contributions, but a social measure granted to unemployed persons on purely social grounds, then the requirement to perform some work in exchange for the allowance would not in itself constitute forced or compulsory labour in the sense of the Convention. Nevertheless, as indicated by the Governing Body committee examining a representation under article 24 of the Constitution in its report adopted in November 1997, if the allowance paid were to constitute an excessively low level of remuneration for the work involved, the scheme could be tantamount to exploiting constraints by offering people who had no other options, employment on terms that would not normally be acceptable (GB.270/15/3, November 1997).

107. *Requirement to work overtime*. Both Canada and Turkey posed the question of whether a requirement to work overtime was an infringement of Convention No. 29. The Committee considers that the imposition of overtime does not affect the application of the Convention so long as it is within the limits permitted by the national legislation or collective agreements.

108. *Convention No. 105: Required public service*. The Government of Sri Lanka considers that some legislative provisions appear to be in contradiction to Article 2, paragraph 1(b), of Convention No. 105. Under the Compulsory Service Act (No. 70 of 1961) the State requires doctors trained at public expense to serve in public hospitals. The Government states that this was necessary in the past to compensate the lack of qualified personnel in order to achieve development objectives; but that the position at present is that "the State has recruited the full cadre of required medical practitioners" and those who graduate from the medical college "have to seek employment on their own". Recalling that the same legislation have been the subject of comments for some time under the Forced Labour Convention, 1930 (No. 29) ratified by Sri Lanka, and noting the Government's indications in its reports under that Convention that the Act was not being implemented, the Committee trusts that it will soon be repealed, so as to bring the law into conformity with Convention No. 29, as well as with actual practice. The Committee notes with interest from the Government's report under article 19 that Convention No. 105 is being considered for ratification by the National Tripartite Committee for International Labour Standards. The Government of *Viet Nam* indicates that the low level of social, economic and educational development in the country leaves it with a need to mobilize the population to resolve the resulting problems. There are thus some forms of obligatory public work and service obligations in force. The Government states that it will consider ratification of both these Conventions when it is appropriate. The Government of *Nepal* indicates that while there are no legislative barriers to the ratification of these two instruments, there does exist a system in practice by which "landless peasants" are mobilized for development. The Government states that measures have been taken to eliminate this system by providing training for productive employment, and that it hopes to be able to ratify these instruments in the near future, when this phenomenon has been eliminated.

109. The Committee can only note in these cases, as it has in others, that Convention No. 105 prohibits recourse to forced and compulsory labour for development purposes. It notes that these governments acknowledge that this practice is incompatible with ILO standards, and that they are moving toward a situation in which recourse to this form of work will not be used. The Committee points out that this is not simply a technical matter of compliance with specific standards, but an issue of the means that are both acceptable and useful for national development. The experience of almost all countries in the world is that forced and compulsory labour is not in fact a productive way in which to develop, and that no exceptions to universally recognized human rights need to be sought in the name of development. The Committee urges these countries to have resort to international assistance, should this prove necessary, to find alternatives to forced labour for development purposes.

110. *Political opinion and social order.* Both *Malaysia* and *Singapore* have denounced Convention No. 105, and both have indicated that they do not intend to renew their ratifications. Singapore has indicated that the Committee of Experts should understand the need to combat subversion and to maintain racial harmony and security. Malaysia has stated that since the basic differences in perception between the country and the ILO, which led it to denounce the Convention several years ago, have not changed it also does not envisage renewing ratification. The Committee notes these statements. It considers, as it always has done, that it is not necessary to use prison sentences, especially those involving compulsory labour, to maintain public order, racial harmony and national security. Convention No. 105 was adopted specifically to guarantee freedom of political opinion and speech, inter alia, within the normal bounds of democracy, by discouraging governments from using methods that are unnecessarily repressive of fundamental human rights, to achieve worthy social goals. The Committee recalls also that the ILO's fundamental human rights Conventions in particular are applicable equally to all States; and that while it has often expressed its understanding of the difficult path toward national development, the requirements of these Conventions are not subject to interpretation in this sense.

B. Collaboration with other international organizations

111. The Committee refers regularly in its General Report, and in comments on the application of a number of Conventions, to the findings of other supervisory bodies of the United Nations system and to other forms of collaboration with them (see paragraphs 69 to 79). This exchange of information and expertise is particularly close in relation to the instruments on fundamental human rights, including those on forced and compulsory labour. This is made manifest in a resolution adopted in August 1997 by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, when examining the report of its Working Group on Contemporary Forms of Slavery. In paragraph 64 of resolution 1997/22, the Sub-Commission: "Recommends that the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization ... give particular attention in their work to the implementation of the provisions and standards designed to ensure protection of children and other persons exposed to contemporary forms of slavery, such as the sale of children, child prostitution and child pornography, the exploitation of child labour, bonded labour and the traffic in persons." The Committee welcomes this resolution, and is glad to continue and to further the existing cooperation between the supervisory bodies of the ILO and the United Nations in this respect.

C. Recent developments: Prison labour

112. It has now been some years since the Committee of Experts carried out its last General Survey on the application of these Conventions (in 1979). In that time, there has been one significant development in a number of States which has had a marked effect on the application of the Convention. This has to do with prison labour, and more precisely with the trend towards two related phenomena in some member States. One is that prisoners in publicly administered prisons are more often working for private firms within the public prisons; the other is that in some cases prison administration has been contracted to private firms, and prisoners are working for purposes of production in these prisons. This has an obvious effect on the application of the Convention, and in particular its Article 2, paragraph 2(c).

Prisoners working for private employers

Information supplied by governments under article 19 of the Constitution

113. Information is already available from a number of countries which have ratified the Convention, and is reflected in the comments made by the Committee under article 22 of the Constitution. The following additional material was received from non-ratifying countries.

(i) Prisoners in publicly administered prisons

114. The Government of Canada has indicated in its report that there are no privately run prisons in Canada, but that prisoners do perform labour for private companies or individuals. At the federal level, private companies which wish to gain access to prison labour must do so through CORCAN, a special agency responsible for cooperation with the public and private sectors in the field of labour. Private companies involved are responsible for investment and production management. Their cooperation with the public sector may involve the sharing of markets, production, technical competence or any other area where cooperation will result in a mutual advantage. Another model involves the sale of products or services to the private sector through CORCAN.

(ii) Prisoners in privately run prisons

115. According to the information communicated by the Government of the United States in its report, approximately 77,000 individuals are incarcerated in prisons managed by profit-making corporations, which represents around 4 per cent of the total inmate population in the United States. In addition, state and local prisons have increased the practice of contracting out prisoners to work for private companies. According to the Department of Justice, 30 states have legalized the contracting out of prison labour since 1990. The Government has stated that "the federal system does not currently permit private prisons or make individuals available to work for private companies. The federal prisons, however, do operate facilities within the prisons which produce goods for the federal Government". As regards private prisons, the Government indicates that this practice represents the decisions of states "that prisons and other correctional facilities can be operated more efficiently by private companies".

Requirements of Convention No. 29 (Article 2, paragraph 2(c))

116. The Committee recalls that under *Article 2, paragraph 2(c), of Convention No. 29*, work or service exacted from any person as a consequence of a conviction in a court of law is exempted from the scope of the Convention only if two conditions are met, namely "that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations". Both these conditions are necessary for compliance with the Convention.

117. The Committee noted in earlier comments made under the Convention, and in paragraph 98 of its 1979 General Survey, that the provisions of the Convention which prohibit convict labour from being hired to or placed at the disposal of private individuals, companies or associations are not limited to work outside penitentiary establishments but apply equally to workshops which may be operated by private undertakings inside prisons, and that, *a fortiori*, the prohibition covers all work organized by privately run prisons.

118. The provisions of *Article 2(2)(c)* are not conditioned on any particular kind of legal relationship. Thus, they are not limited to cases where a legal relationship would come into existence between the prisoner and the private undertaking, but cover equally situations where no such legal relationship exists and the prisoner has a direct relationship only with the prison. The Committee noted that where a prisoner is "hired to" a private company under a contract between the prison service and the company, the relationship is a triangular one comparable to that existing between a temporary employment agency or labour contractor, the enterprise using labour, and the temporary worker. There are, however, two differences which have a direct bearing on the observance of the Convention: the temporary or contract worker normally has an employment contract and the corresponding protection of labour law, which is not the case for compulsory prison labour; furthermore, prison labour is captive labour in the full sense of the term, namely, in contrast to temporary workers these workers have no access, in law and in practice, to employment outside the prison environment. Indeed, in most cases their work is covered by no labour law whatsoever. Thus if the prisoner is obliged to work in some situations the triangular relationship in which the prisoner's labour is the subject of a contract between the prison service and a private company may correspond to what is referred to in *Article 2, paragraph 2(c)*, as being incompatible with the Convention.

119. In paragraph 97 of its 1979 General Survey, the Committee noted that in certain countries certain prisoners may, particularly during the period preceding their release, voluntarily accept employment with private employers, subject to guarantees as to the payment of normal wages and social security, consent of trade unions, etc. The Committee has considered that, provided the necessary safeguards exist to ensure that the persons concerned offer themselves voluntarily without being subjected to pressure or the menace of any penalty, such employment does not fall within the scope of the Convention. As indicated above, the practice of many countries has developed since the Committee's earlier General Survey, to a situation in which there is more general use of prison labour for private employers.

120. The Committee considers that freely given consent by the prisoner to working for a private employer is one of the two necessary conditions for compliance with the Convention's prohibition on hiring prisoners to, or placing them at the disposal of, these employers (though this does not of course apply to prison labour other than for private employers). This phrase in the Convention refers to an assignment of prisoners to work for private purposes, without regard to the prisoner's own choice. The Convention does not require that they should have a choice as to whether to work — it explicitly allows the imposition of labour in prison, under the conditions laid down, without infringing its provisions.

121. In private prisons there is one form of constraint which will have an effect also on the question of supervision: the private enterprise is not only a user of prison labour, but will inevitably also exercise, in law or in practice, an important part of the authority which under the Convention should be exercised by the public authorities.

122. As concerns the question of *supervision*, the Committee recalls that the work or service must be "carried out under the supervision and control of a public authority". The reason for this requirement is to prevent the conditions under which prisoners work being determined otherwise than by the public authorities, in a situation in which the workers concerned do not enjoy the rights of free workers. The supervision of the public authorities is therefore required to ensure that conditions remain within acceptable limits.

123. Article 2(1) of the Convention defines forced or compulsory labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The Committee recalls that, as indicated in paragraph 21 of its 1979 General Survey, it was made clear during the consideration of the draft instrument by the Conference that the "penalty" referred to in this provision need not be in the form of penal sanctions, but might take the form also of a loss of rights or privileges. Thus it would appear indispensable under the Convention to ensure that the prisoner's willingness or not to work for the private enterprise has no bearing on his or her conditions of imprisonment and expectation of remission of sentence or early release. This should also reinforce the availability of work for prisoners as a means of rehabilitation, which the Committee strongly endorses.

124. The Committee has raised questions in a number of cases under Convention No. 29, about the degree to which this supervision and control is actually being exercised by a public authority. No general prescription may be laid down which will cover all the possible arrangements for this. The Committee considers, however, that if the supervision and control are restricted to a general authority to inspect the premises periodically, this by itself would not appear to meet the requirement of the Convention for supervision and control.

125. As the Committee has pointed out previously, only when performed in conditions approximating a free employment relationship can work by prisoners for private companies be held compatible with the explicit prohibition in *Article 2(2)(c)*; this necessarily requires the formal consent of the person concerned. The Committee has also pointed out that a necessary part of consent is that there must be further guarantees and safeguards covering the essential elements of a free labour relationship, if the employment is to be removed from the scope of *Article 2(2)(c)*. The Committee notes that in some countries the governments are making progress towards full compliance with the Convention in their administration of privatized prisons by taking measures so that conditions in privatized prisons progressively approach those of free workers. It hopes to see continued advances in this sense.

IV. Technical assistance in the field of standards

A. Direct contacts

126. There was one direct contacts mission this year to Bolivia concerning freedom of association.

B. Promotional activities

127. Several regional and subregional seminars and symposia on international labour standards and freedom of association have been held: a Tripartite Subregional Seminar on Freedom of Association (October, United Republic of Tanzania); a National Tripartite Seminar on Discrimination (September, Sri Lanka); a Tripartite Subregional Seminar on Equality of Opportunity and Treatment in Employment for French-speaking countries of Africa (April-May, Réunion); three tripartite subregional seminars on national legislation and international labour standards (September, Romania; September-October, Azerbaijan; and October, Chile); two tripartite symposiums on trade union rights (January, Sri Lanka; January, Democratic Republic of the Congo); and four seminars on freedom of association for workers' representatives (April, Bulgaria; August, Kenya; August, Cameroon; September, France).

128. The Committee notes that the International Labour Standards Department has been carrying out activities for the promotion of the ILO standards system by holding seminars on standards and the ILO legal information system. This consists specifically of ILOLEX, a CD-ROM database on international labour standards, and NATLEX, a database on national labour, social security and related human rights legislation. During 1997, in close collaboration with the multidisciplinary advisory teams and with the support of the regional offices, seminars have been held in Africa, Central and Eastern Europe and Latin America. Participants in these seminars, senior officials from national administrations and employers' and workers' organizations, along with legal officers and researchers, have had the opportunity to familiarize themselves with these databases and to discuss current subjects relating to standards.

129. The Committee also notes that at the beginning of this year, the Standards Department was given the responsibility of managing the international labour standards section of the ILO Internet website. A document was presented to the Committee on Legal Issues and International Labour Standards for the March session of the Governing Body concerning Internet publication of standards-related information, a new promotional initiative which was welcomed by the Committee. Most importantly, the two departmental legal databases — ILOLEX and NATLEX — have now been made globally available on the ILO website.[3] Statistically, these two databases respond to several thousand requests for information on labour standards and national labour legislation every month from approximately 50 different countries from every area of the world.

130. The Committee notes with interest that the Standards Department continues its annual training course for government officials responsible for reporting on international labour standards which is held at the Turin Centre and in Geneva during the two weeks immediately preceding the June Conference. Many of the fellows stay on in Geneva to participate in the work of the Conference Committee on the Application of Standards. This year the course was attended by 36 participants (31 government officials and five employers) from the following countries: Antigua and Barbuda, Azerbaijan, Botswana, Cameroon, Congo, Dominica, Equatorial Guinea, Guatemala, Haiti, Jamaica (two), Kenya, Kuwait, Lesotho, Mali, Mauritania, Mongolia, Morocco, Nepal, Nicaragua, Paraguay, Philippines (two), Romania, Rwanda, Sri Lanka, Syrian Arab Republic, South Africa (two), Swaziland, United Republic of Tanzania, Thailand, Trinidad and Tobago (two), Uganda and United Arab Emirates. The Committee also noted with interest that the International Labour Standards Department provided inputs to many of the other courses organized by the Turin Centre as well as to the production of training materials. This contributes to the better awareness by the tripartite constituents of the whole standard-setting system.

131. Other activities for the promotion of standards took the form of participation in seminars, workshops, symposia and meetings, and the provision of advisory services, technical assistance and consultations concerning international labour standards for the following countries and territories: Argentina, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Cameroon, Chile, Democratic Republic of the Congo, Côte d'Ivoire, Ecuador, Egypt, Eritrea, Ethiopia, France, France (Réunion), Germany, Hungary, India, Japan, Kenya, Lithuania, Mexico, Netherlands, Pakistan, Panama, Paraguay, Peru, Philippines,

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[3] The ILO's website may be found at http://www.ilo.org.

Sao Tome and Principe, Sri Lanka, Switzerland, United Republic of Tanzania, Uganda, United Kingdom, Uruguay and Venezuela.

132. Furthermore, the International Labour Standards Department has published the *Digest of decisions and principles of the Freedom of Association Committee* in Russian. The Arabic and Portuguese editions are in preparation.

C. Standards and multidisciplinary advisory teams

133. The Committee noted that specialists in international labour standards continued in place in six of the 14 multidisciplinary teams (MDTs) (in Bangkok, Dakar, Lima, Port of Spain, San José and Santiago de Chile). It understood that there remained to date a further six such vacancies (in Abidjan, Addis Ababa, Beirut, Harare, Manila and New Delhi) and two new such posts (in Cairo and Moscow) were to be created in the 1998-99 biennium, the team in Budapest and that to be created in Yaoundé having no provision in this respect. The Committee recalled that the services provided by the MDTs — and especially by the standards specialists, where they exist — include assisting national constituents in fulfilling their standards-related obligations and promoting tripartite consultations on the issues. The standards specialists also work in the framework of the Active Partnership Policy towards the integration of standards considerations in country objectives and implementation of the objectives in terms of international labour standards.

134. The Committee has noted with interest the many instances where standards specialists have intervened — most often in an informal way — to provide explanations and assistance as to the measures called for to overcome the obstacles of application which the Committee itself has pointed to in its observations and direct requests. It welcomes also the efforts made by the International Labour Standards Department to supplement and support their work, especially when either no standards specialist is available in the MDT concerned or when highly specialized expertise is required. The decision to bring standards specialists and associate experts on standards from the field to headquarters on mission in May-June 1997 was clearly highly beneficial, in enabling comparison of experience and briefing on current issues preoccupying headquarters departments; and in facilitating contacts with national tripartite constituents represented in delegations to the Conference.

135. In this light, the Committee has been impressed by the invaluable part to be played by MDTs in both promoting and supervising the fullest possible realization of its labour standards and principles. It is convinced of the desirability of ensuring a sufficiency of qualified standards specialists in the field so that the teams are able to play that part, whilst maintaining the capacity of the International Labour Standards Department to service the supervisory bodies.

V. Role of employers' and workers' organizations

136. At each session, the Committee draws the attention of governments to the role that employers' and workers' organizations are called upon to play in the application of Conventions and Recommendations and to the fact that numerous Conventions require consultation with employers' and workers' organizations, or their collaboration in a variety of measures. The Committee notes with satisfaction that almost all governments have indicated in the reports supplied under articles 19 and 22 of the Constitution the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, they have communicated copies of the reports supplied to the ILO.[4] All governments have indicated the organizations to which they have communicated copies of the information supplied to the ILO on the submission to the competent authorities of the instruments adopted by the Conference and the reports due under article 19 of the Constitution.

137. In accordance with established practice, the ILO sent to the representative organizations of employers and workers a letter concerning the various opportunities open to them of contributing to the implementation of Conventions and Recommendations, accompanied by relevant documentary material, and a list of the reports due from their respective governments and copies of the Committee's comments to which the governments were invited to reply in their reports.

Observations made by employers' and workers' organizations

138. Since its last session, the Committee has received 211 observations, 37 of which were communicated by employers' organizations and 174 by workers' organizations. It shows again the interest of employers' and workers' organizations in the implementation of ILO standards and reflects the constant efforts made by the supervisory bodies and the Office to give interested organizations complete information on their role in this area.

139. The majority of observations received (202) relate to the application of ratified Conventions.[5] Nine observations relate to the reports provided by governments under

[4] A request has been addressed directly to Paraguay.

[5] *Afghanistan:* International Confederation of Free Trade Unions (ICFTU) on Convention No. 111; *Argentina:* Association of ex-Employees of State, Public and Private Establishments of Rosario, Province of Santa Fé on Convention No. 35; Banking Association (Association of Bank Employees) on Convention No. 98; Educational Workers' Union of Rio Negro on Convention No. 95; Union of United Maritime Workers (SOMU) on Conventions Nos. 9, 26, 144 and 154; *Australia:* Australian Chamber of Commerce and Industry (ACCI) on Convention No. 98; Australian Council of Trade Unions (ACTU) on Conventions Nos. 87 and 98; *Bangladesh:* World Confederation of Labour (WCL) on Convention No. 29; *Bolivia:* Bolivian Central of Workers (COB) on Conventions Nos. 102, 122 and 128; World Federation of Trade Unions (WFTD) — American Regional Office on Convention No. 102; *Brazil:* Inter-Union of Trade Unions of Dock Shore Casual Workers of Itajaí of Navigators of Florianópolise Region of Santa Catarina (ISTAOPINAFSC), Stevedors' National Federation (FNE), National Federation of Foremen and Loading and Unloading Responsible Clerks, Dock Guards and Bloc Workers and Pointers (FENCCOVIB) on Convention No. 137; National Secretaries' Federation on Convention No. 158; Railway Engineers' Association on Convention No. 158; Stevedors' Trade Union of Santos, São Vicente, Guarajá and Cubatão on Convention No. 137; Stevedors' Trade Union of São Sebastião on Conventions Nos. 98, 137 and 158; Stowage Workers' Trade Union of São Sebastião on Conventions Nos. 98, 137 and 158; Trade Union of Alimentation Industries Workers of Jundiaí, Cajamar, Campo Limpo Paulista, Louveira, Itupeva, Várzea Paulista and Vinhedo on Conventions Nos. 81 and 155; Trade Union of Employees of Autonomous Agencies of Commerce and Enterprises of the Municipality of Rio de Janeiro on Convention No. 158; Trade Union of Loading and Unloading Responsible Clerks of Docks of the State of Espírito Santo on Convention No. 152; Trade Union of Patos de Minas on Convention

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No. 158; Wage-earner Rural Employees Trade Union of the State of São Paulo (FERAESP) on Convention No. 141; *Chad:* Confederation of Unions of Chad (CST) on Conventions Nos. 26, 81, 87, 98 and 111; *Costa Rica:* Committee — Inter-Confederal of Costa Rica on Conventions Nos. 81, 87, 98, 105, 111, 122, 135 and 144; *Croatia:* Association of Clubs of Military Retirees — Pensioners' Trade Union of Croatia on Conventions Nos. 48 and 102; Pensioners' Trade Union of Croatia — Croatian Association of Unions (HUS) on Conventions Nos. 48, 87 and 102; Union of Autonomous Trade Unions of Croatia (SSSH) on Convention No. 102; *Cyprus:* Trades Union Congress (TUC) on Convention No. 111; *Fiji:* Fiji Trades Union Congress (FTUC) on Convention No. 98; *Finland:* Central Organization of Finnish Trade Unions (SAK) on Conventions Nos. 81, 119 and 129; Confederation of Finnish Industry and Employers (TT) on Convention No. 81; Confederation of Unions of Academic Professionals (AKAVA) on Convention No. 81; Employers' Confederation of Service Industries (PT) on Convention No. 81; Finnish Confederation of Salaried Employees (STTK) on Convention No. 129; *France:* French Democratic Confederation of Labour (CFDT) on Conventions Nos. 81, 87, 98, 105, 122 and 131; General Confederation of Labour (CGT) on Convention No. 122; General Confederation of Labour "Force ouvrière" (CGT-FO) on Conventions Nos. 81 and 118; National Council of French Employers (CNPF) on Convention No. 141; National Union CGT of Social Affairs (UNAS) on Convention No. 81; *France (French Guiana):* French Democratic Confederation of Labour (CFDT) on Convention No. 81; *France (French Polynesia):* French Democratic Confederation of Labour (CFDT) on Conventions Nos. 10, 33, 81, 98, 105, 111, 122 and 144; *France (French Southern and Antarctic Territories):* French Democratic Confederation of Labour (CFDT) on Conventions Nos. 22, 73, 98, 111 and 146; *France (Martinique):* Democratic Central of Martinique of National Employment Office Workers on Convention No. 111; *Hungary:* National Federation of Autonomous Trade Unions on Convention No. 139; *Iceland:* Icelandic Federation of Labour (ASÍ) on Convention No. 144; *India:* All-India Trade Union Congress (AITUC) on Convention No. 107; Centre of Indian Trade Unions (CITU) on Conventions Nos. 1 and 144; Hind Mazdoor Sabha on Convention No. 144; Indian National Trade Union Congress (INTUC) on Convention No. 144; Mahabubnagar District Palamoori Contract Labour Union on Conventions Nos. 1, 26 and 29; Standing Conference of Public Enterprises (SCOPE) on Convention No. 144; World Confederation of Labour (WCL) on Convention No. 29; *Indonesia:* World Confederation of Labour (WCL) on Convention No. 29; *Italy:* Trade Unions' Association of Credit Establishments (ASSICREDITO) on Convention No. 81; *Japan:* Federation of Korean Trade Unions (FKTU) on Convention No. 29; Japanese Labour Unions on Convention No. 29; *Mauritania:* World Confederation of Labour (WCL) on Convention No. 29; *Mexico:* Authentic Labour Front on Convention No. 169; Numerous Associations-Centrals-Trade Unions' Delegations-Trades Unions of Mexico on Convention No. 102; *Netherlands:* Netherlands Trade Union Confederation (FNV) on Convention No. 98; *New Zealand:* New Zealand Council of Trade Unions (NZCTU) on Conventions Nos. 26, 81, 99, 105, 111 and 144; New Zealand Employers' Federation (NZEF) on Conventions Nos. 81, 105, 111 and 144; *Norway:* Confederation of Norwegian Business and Industry (NHO) on Convention No. 137; Confederation of Trade Unions (LO) on Conventions Nos. 98, 111, 119, 135, 137 and 144; Norwegian Shipowners' Association on Conventions Nos. 9, 91, 111, 137 and 163; Norwegian Union of Marine Engineers on Convention No. 163; *Pakistan:* All Pakistan Federation of Trade Unions (APFTU) on Convention No. 29; International Confederation of Free Trade Unions — Pakistan Council (ICFTU-PC) on Convention No. 87; *Panama:* Latinoamerican Workers Central (CLAT) on Conventions Nos. 87 and 98; *Paraguay:* World Confederation of Labour (WCL) on Convention No. 29; *Peru:* Association of Retired Oil Industry Workers of the Metropolitan Area of Lima and Callao on Convention No. 102; General Confederation of Workers of Peru (CGTP) on Convention No. 1; World Confederation of Labour (WCL) on Convention No. 29; *Poland:* Polish Trade Union of Doctors on Convention No. 151; *Portugal:* General Confederation of Portuguese Workers (CGTP) on Conventions Nos. 81, 98, 103, 131, 135 and 144; Confederation of Portuguese Industry (CIP)
(continued...)

article 19 of the Constitution of the ILO relating to the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983.[6]

140. The Committee notes that, of the observations received this year, 129 were transmitted directly to the International Labour Office which, in accordance with the practice established by the Committee, referred them to the governments concerned for comment. In 82 cases the governments transmitted the observations with their reports, sometimes adding their own comments.

141. The Committee also examined a number of other observations by employers' and workers' organizations, consideration of which had been postponed from the last session because the observations of the organizations or the replies of the governments had arrived just before or just after the session. It has had to postpone the examination of a number of observations to its next session, when they were received too close to or even during the Committee's present session to allow sufficient time for the governments concerned to make comments and for the Committee to consider the matters involved.

142. The Committee notes that in most cases the organizations of employers and workers endeavoured to gather and present elements of law and precise facts on the application in practice of ratified Conventions. It notes that the matters dealt with in these

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[5](…continued)
on Conventions Nos. 81, 103, 111, 144 and 171; *Russian Federation:* Federation of Independent Trade Unions of Russia (FNPR) on Convention No. 95; International Confederation of Free Trade Unions (ICFTU), International Federation of Chemical, Energy, Mine and General Workers' Unions (IFCEM), Independent Coal Employees' Federation of Russia, Russian Chemical and Allied Industries Workers' Union on Convention No. 95; *Seychelles:* Seychelles Workers' Union (SWU) on Conventions Nos. 16, 87 and 105; *Slovenia:* Association of Free Trade Unions of Slovenia on Convention No. 122; *Spain:* Trade Union Confederation of Workers' Committee (CC.OO.) on Convention No. 98; *Sri Lanka:* Lanka Jathica Estate Workers' Union on Conventions Nos. 29, 98, 131, 135 and 144; *Sudan:* World Confederation of Labour (WCL) on Convention No. 29; *Sweden:* Swedish Employers' Confederation (SAF) on Convention No. 137; Swedish Trade Union Confederation (LO) on Conventions Nos. 100, 121 and 137; *Turkey:* Confederation of Turkish Trade Unions (TÜRK-IŞ) on Conventions Nos. 58, 94, 99, 119 and 144; Confederation of Turkish Employers' Associations (TISK) on Conventions Nos. 26, 58, 59, 81, 98, 99, 105, 111, 119, 135, 144, 151 and 158; Turkish Municipal and General Workers' Union on Convention No. 95; *Ukraine:* Central Trade Union Committee of Geology, Geodesy and Cartography Workers of Ukraine on Conventions Nos. 52 and 95; Crimean Republican Trade Union Committee of Health Care Workers of the Ukraine on Convention No. 95; Dnepropetrovsky Regional Trade Union of Workers of Scientific and Industrial Establishments on Convention No. 158; Kharkov Committee of the Trade Union of the Ukrainian National Academy of Sciences on Convention No. 95; *United Kingdom:* Trades Union Congress (TUC) on Convention No. 98; *United Kingdom (Bermuda):* Bermuda Employers' Council on Conventions Nos. 87 and 98; Bermuda Industrial Union on Conventions Nos. 87 and 98; *Uruguay:* Confederation of State Officers' Organizations on Convention No. 151; Inter-Union Assembly of Workers — Workers' National Convention (PIT-CNT) on Conventions Nos. 98, 111, 131 and 141; National Administration of Electrical Power Plants and Transmission (AUTE/PIT-CNT) on Conventions Nos. 100 and 111.

[6] *Chad:* Trade Union's Confederation of Chad (CST); *New Zealand:* New Zealand Council of Trade Unions (NZCTU); New Zealand Employers' Federation (NZEF); *Portugal:* General Confederation of Portuguese Workers (CGTP); Portuguese Industry Confederation (CIP); Workers' General Union (UGT); *Slovenia*: Association of Free Trade Unions of Slovenia; *Spain:* General Union of Workers (UGT); *Sri Lanka*: Employers' Federation of Ceylon.

observations have touched on a very wide range of Conventions relating, in particular, to the following subjects: protection of the right to organize and the right to collective bargaining, wage payment, discrimination, forced labour, minimum wage fixing, occupational safety and health, employment policy, labour inspection, tripartite consultations relating to international labour standards, maritime labour, social security. The second part of this report contains most of the comments made by the Committee on cases in which the comments raised matters relating to the application of ratified Conventions. Where appropriate, other comments are examined in requests addressed directly to the governments.

143. The Committee notes lastly that the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), has now received 82 ratifications. Thus, the number of ratifications has more than doubled since the General Survey on the Convention in 1982, which noted favourable prospects in this respect.[7] The Committee hopes that many other countries will be able to ratify it, all the more since some have recently adopted provisions to establish tripartite bodies for ILO activities, with reference to the 1976 instruments.

VI. Reports on ratified Conventions
(articles 22 and 35 of the Constitution)

Supply of reports

144. The Committee's principal task consists of the examination of the reports supplied by governments on Conventions which have been ratified by member States or which have been declared applicable to non-metropolitan territories.

145. In accordance with the decision to rearrange the regular supervisory procedures, adopted by the Governing Body at its 258th Session (November 1993), reports were requested this year on 36 ratified Conventions.[8] These reports cover the period ending 1 June 1997. Furthermore, detailed reports were also requested from certain governments on other Conventions, in accordance with the criteria approved by the Governing Body concerning the obligation to send reports more frequently.[9] The procedures which are followed and established practice with regard to the obligations relating to international labour standards are found in the *Handbook of procedures relating to international labour Conventions and Recommendations*.

146. In accordance with the Joint Declaration of the Government of the People's Republic of China and the Government of the United Kingdom concerning Hong Kong, the People's Republic of China resumed the exercise of sovereignty over Hong Kong with effect from 1 July 1997. As from that date Hong Kong became a Special Administrative Region of the People's Republic of China. The Committee noted that the Government of the People's Republic of China communicated to the Director-General, by a letter dated 6 June 1997, 46 notifications concerning Conventions which would continue to be applied to the Hong Kong Special Administrative Region. Accordingly, the Committee will examine at its 69th Session (1998) the reports due on Conventions which apply to the Hong Kong Special Administrative Region.

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[7] International Labour Conference, 68th Session, Geneva, 1982, Report III (Part 4(B)), para. 202.

[8] Conventions Nos. 3, 7, 9, 26, 58, 68, 81, 84, 91, 92, 98, 99, 103, 105, 110, 111, 112, 119, 120, 126, 131, 133, 135, 137, 141, 144, 146, 153, 163, 164, 165, 166, 170, 172, 173, 174.

[9] GB.258/LILS/6/1 (November 1993), para. 12(c).

Reports requested and received

147. A total of 1,927 reports were requested from governments on the application of Conventions ratified by member States (article 22 of the Constitution). At the end of the present session of the Committee, 1,211 of these reports had been received by the Office. This figure corresponds to 62.8 per cent of the reports requested, compared with 63.3 per cent last year. The Committee regrets that, as indicated in paragraph 168 below, a number of reports received are incomplete and do not enable it to reach conclusions regarding the application of the Conventions concerned. A table showing reports received and not received, classified by country and by Convention, is to be found in Part Two (section I, Appendix I). Another table (section I, Appendix II) shows, for each year in which the Committee has met since 1933, the number and percentage of reports received by the prescribed date, by the date of the meeting of the Committee, and by the date of the session of the International Labour Conference.

148. In addition, 294 reports were requested on Conventions declared applicable with or without modifications to non-metropolitan territories (articles 22 and 35 of the Constitution). Of these, 214 reports, 72.7 per cent, had been received by the end of the Committee's session, in comparison with 74.8 per cent last year. A list of the reports received and not received, classified by territory and by Convention, is to be found appended to section II of Part Two of this report.

149. In those cases in which the reports were not accompanied by copies of the relevant legislation, statistical data or other documentation necessary for their full examination, and where this material was not otherwise available, the Office, as requested by the Committee, wrote to the governments concerned asking them to supply the necessary texts to enable the Committee to fulfil its task.

Compliance with reporting obligations

150. Most of the governments from which reports were due on the application of ratified Conventions have supplied all or most of the reports requested, as can be seen from Appendix I, Part Two, section I. However, 57 governments have not complied with their obligation to supply reports on ratified Conventions. Thus, all or the majority of the reports due this year have not been received from the following countries: Afghanistan, Albania, Angola, Antigua and Barbuda, Bahrain, Bangladesh, Barbados, Cameroon, Côte d'Ivoire, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark (Faeroe Islands, Greenland), Djibouti, Ethiopia, France (French Polynesia, Guadeloupe), Gabon, Georgia, Ghana, Guinea-Bissau, Haiti, Honduras, Kuwait, Kyrgyzstan, Latvia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Morocco, Nepal, Netherlands (Aruba), Nicaragua, Niger, Nigeria, Seychelles, Sri Lanka, Tajikistan, United Republic of Tanzania, Venezuela, Yemen. No reports have been received for the past two or more years from the following countries: Armenia, Bolivia, Bosnia and Herzegovina, Burundi, Grenada, Lao People's Democratic Republic, Liberia, Republic of Moldova, Myanmar, Saint Lucia, Sierra Leone, Somalia, Uzbekistan.

151. The Committee urges the governments of these countries, and also of those which have sent only some of the reports due, to make every effort to supply the reports requested on ratified Conventions. Where no reports have been sent for a number of years, it is likely that particular problems of an administrative or technical nature are preventing the government concerned from fulfilling its obligations under the ILO Constitution, and it may be that in cases of this kind assistance from the Office, in particular with the help of members of multidisciplinary advisory teams who are specialists on international labour standards, could enable the government to overcome its difficulties.

Obstacles to compliance with reporting obligations

152. The Committee notes the references by several members of the Conference Committee in 1997 to the difficulties met with by various countries in fulfilling their reporting obligations under articles 19, 22 and 35 of the Constitution, and the indication that the Office would study the problem and its possible solution. It notes that, in the discussion of fulfilment of those obligations in the Conference Committee, several government representatives described the nature of their difficulties. It notes with interest the position consistently taken by the Employer and Worker members of that Committee, who have underlined the seriousness of the reporting obligations and their basic importance to the supervisory processes. It notes with interest also that the International Labour Standards Department wrote in July 1997 to all governments concerned not covered by multidisciplinary teams, inviting them to comment, and in the other cases has repeatedly requested the MDTs to envisage advisory missions and other activities designed to obtain the maximum performance by governments in this respect.

153. The Committee has noted the information and explanations given by various government representatives in the Conference Committee in 1997 and in previous years. Although each national situation is obviously different, common themes do appear. It observes that the difficulties mentioned below no doubt explain why various developing countries have not met their reporting obligations but that for industrialized countries the same may not be said.

154. For some countries, it seems fairly clear that the failure to send reports to the ILO is just one consequence of a more general failure of the machinery of government for security reasons, sometimes involving outright civil war. In these cases, there seems to be little the supervisory bodies or the Office can do, except note the failure and look forward to a time when the ILO will once more be able to play an active role in promoting social progress in the country — including through standards-related activities. The Committee has, on the other hand, been interested to note that the ILO has, especially in promoting international labour standards, been directly involved in the peace process in some countries, in particular in Guatemala.

155. For another group of countries, perhaps the majority, there seem to be administrative problems of various kinds. Sometimes — in the case of certain non-metropolitan territories — there is a problem of communication with the authorities of the member State. The Committee would like to think that these problems could be relatively easily remedied by the member States concerned in cooperation with the governments of the respective territories. In some cases, institutional problems are cited, which may refer to transient difficulties on ministerial reorganization (in respect of which the Office's labour administration specialists can perhaps assist); or they may have more deep-seated causes, when governments of developing countries consider themselves over-committed in terms of ratifications of Conventions which create substantive as well as procedural obligations beyond what they can readily discharge. These are cases in which the Committee looks very much to the Office, and particularly the multidisciplinary teams with their standards specialists, to provide judicious and well-targeted advice and assistance which can be practical and immediate and take place in a coherent framework in application of the Active Partnership Policy.

156. In many other cases, the difficulty lies not in absence of political will on the part of governments, but in shortage of competent staff duly trained in labour standards matters and able to prepare the reports due; it is well-known that in several countries the turnover of staff in the ministry responsible for labour standards issues is rapid, in addition to which budgetary pressures on labour administrations may well mean that personnel resources are actually diminished in this vital area. In this context, the Committee refers to paragraph 107 of its report last year[10] and Chapter II, Part VI, of its General Survey of the Labour Administration Convention (No. 150) and Recommendation (No. 158), 1978,[11] as to the role of labour administrations in international labour affairs.

157. One aspect of the administrative problems met with is no doubt the need for continual information and training for national officials on the ILO's standards-related activities, including reporting obligations and their fulfilment. Many government representatives in the Conference Committee have mentioned a wish for the ILO's technical assistance as a remedy to reporting failures. On this point, the Committee has again noted with interest the efforts made by the multidisciplinary teams and the International Labour Standards Department — often in collaboration with the Turin Centre — to organize interregional, regional, subregional and national seminars dealing with standards-related obligations (both procedural and substantive). These activities are now fortunately an integral part of the work programme of the ILO. In this connection the Committee underlines again the importance of the responsible units of the ILO having at their disposal adequate personnel and financial resources.

158. The Committee recalls that the reporting arrangements adopted by the Governing Body in November 1993 came into operation in 1996 for a trial period of five years, and that they were intended, among other things, to reduce the reporting burden on governments. It recalls also that the provision of technical assistance on reporting obligations remains a significant part of the duties of the MDTs. The Committee welcomes the sustained efforts by the Office to give training and information on the ILO standard-setting and supervisory system not only to government officials but also to employers' and workers' organizations, which have such an important part to play in all of the procedures. It recalls the very basic importance of this system in the Constitution and the mandate of the ILO, and the indispensable contribution it makes to ensuring that international labour standards remain at the heart of the Organization in reality as well as in rhetoric. The Committee trusts that the Office will, during the remainder of the trial period for the current reporting timetable determined by the Governing Body, devote every attention and all necessary resources to obtaining maximum results in terms of the fulfilment of reporting obligations.

Late reports

159. The Committee is once again bound to emphasize the importance of communicating reports in due time. The reports due on ratified Conventions were to be sent to the Office between 1 June and 1 September 1997. Due consideration is given,

[10] ILO: Report III (Part 1A), ILC, 85th Session, 1997.

[11] ILO: Report III (Part 1B), ILC, 85th Session, 1997.

when fixing this date, particularly to the time required to translate the reports, where necessary, to conduct research into legislation and other necessary documents, and to examine reports and legislation. The supervisory procedure can function correctly only if reports are communicated in due time. This is particularly true in the case of first reports or reports on Conventions where there are serious or continuing discrepancies, which the Committee has to examine in greater depth.

160. The Committee observes that the great majority of reports are received between the time-limit fixed and the date on which the Committee meets: by 1 September 1997, the proportion of reports received was only 28.7 per cent. Although this is higher than for its previous session (20.5 per cent), the Committee is still concerned, since it notes that it is often first reports and those relating to Conventions on which the Committee has made comments that are received the latest. In these circumstances, the Committee has been bound in recent years to postpone to its following session the examination of an increasing number of reports, since they could not be examined with the necessary care owing to lack of time. It has thus had to examine a number of reports at its present session held over from its previous session.

161. The Committee wishes to draw attention to the problem of the timing of transmission by governments of their reports. This year, only a small percentage of reports due were received by the requested date. The Committee notes that under the calendar for the reporting cycle implemented as a result of the decisions taken by the Governing Body in November 1993 the figure, as compared to last year, has not improved much. The majority of reports received from governments continued this time to arrive in the last three months before the Committee's meeting or even during it. This obviously places a huge strain on the supervisory process and effectively makes it impossible for particular cases to be dealt with adequately or at all.

162. The Committee has noted with interest the efforts made by the Office — particularly through the standards specialists present in several of the multidisciplinary teams — to assist in ensuring the fulfilment of reporting obligations. It proposes to consider this question again in the light of the experience of the next few years. In the meantime, it appeals to all governments to examine the means by which their labour administrations can best take advantage of the new reporting arrangements and make sure the obligations are fulfilled.

163. Furthermore, the Committee notes that a number of countries sent the reports due on ratified Conventions during the period between the end of the Committee's work and the beginning of the International Labour Conference, or even during the Conference.[12] The Committee emphasizes that this practice disturbs the regular operation of the supervisory system and makes it more burdensome.

Supply of first reports

164. A total of 80 of the 131 first reports due on the application of ratified Conventions were received by the time that the Committee's session ended. However, a number of countries have failed to supply first reports, some of which are more than a year overdue. Thus, certain first reports on ratified Conventions have not been received from the following States: since 1992 — Liberia (Convention No. 133); since 1993 — Yemen (Convention No. 159); since 1994 — Latvia (Conventions Nos. 111, 122, 135 and

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[12] For the reports received and not received by the end of the Conference, see Report of the Committee on the Application of Standards, Part Two, IC and IIB.

151); since 1995 — Armenia (Convention No. 111), Burundi (Conventions Nos. 87, 100 and 111), Kyrgyzstan (Conventions Nos. 133 and 160), Republic of Moldova (Convention No. 105), Nigeria (Convention No. 144), Seychelles (Convention No. 149); and since 1996 — Armenia (Conventions Nos. 100, 122, 135 and 151), Barbados (Convention No. 147), Cyprus (Convention No. 171), Grenada (Conventions Nos. 87, 100 and 144), Latvia (Conventions Nos. 81, 129, 132, 144, 154, 155 and 158), Uzbekistan (Conventions Nos. 47, 52, 103 and 122).

165. First reports have particular importance since it is the basis on which the Committee makes its initial assessment of the observance of ratified Conventions. The Committee therefore requests the governments concerned to make a special effort to supply these reports.

Replies to the comments of the supervisory bodies

166. Governments are requested to reply in their reports to the observations and direct requests of the Committee, and the majority of governments have provided the replies requested. In accordance with the established practice, the International Labour Office wrote to all the governments who failed to provide such replies, requesting them to supply the necessary information. Of the 78 governments to which such letters were sent, only 12 have provided the information requested.

167. The Committee notes that there are still many cases of failure to reply to its comments; either:

(a) out of all the reports requested from governments, no report or reply has been received; or

(b) the reports received contained no reply to most of the Committee's comments (observations and/or direct requests) and/or did not reply to the letters sent by the Office.

168. In all there were 385 such cases,[11] as compared with 323 last year. The Committee notes with concern that the number of these cases has increased. It is bound to repeat the observations or direct requests already made on the Conventions in question.

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[11] ***Afghanistan*** (Conventions Nos. 105, 111, 137, 141); ***Albania*** (Convention No. 98); ***Angola*** (Conventions Nos. 26, 81, 91, 100, 105, 111); ***Antigua and Barbuda*** (Convention No. 111); ***Bahamas*** (Conventions Nos. 17, 26, 105); ***Bangladesh*** (Conventions Nos. 81, 105, 107, 111); ***Barbados*** (Conventions Nos. 26, 81, 98, 105, 111, 122, 144); ***Bolivia*** (Conventions Nos. 5, 14, 20, 77, 81, 98, 100, 102, 103, 105, 106, 111, 118, 120, 121, 122, 123, 128, 129, 131, 160); ***Bosnia and Herzegovina*** (Convention No. 122); ***Burundi*** (Conventions Nos. 11, 19, 29, 81, 94, 105); ***Cameroon*** (Conventions Nos. 3, 9, 81, 98, 105, 111, 131); ***Chile*** (Conventions Nos. 9, 111, 127); ***Côte d'Ivoire*** (Conventions Nos. 3, 29, 81, 98, 100, 111, 133, 135, 144); ***Czech Republic*** (Conventions Nos. 87, 100, 122, 155); ***Democratic Republic of the Congo:*** (Conventions Nos. 26, 62, 98, 118, 119); ***Denmark*** (Conventions Nos. 98, 111, 115, 119, 122), ***Denmark**: **Faeroe Islands*** (Conventions Nos. 9, 16, 92), ***Denmark**: **Greenland*** (Convention No. 122); ***Djibouti*** (Conventions Nos. 9, 16, 19, 26, 53, 55, 69, 73, 81, 88, 91, 94, 95, 99, 106, 115, 120, 122, 125, 126); ***Ethiopia*** (Conventions Nos. 98, 111); ***France**: **French Polynesia*** (Conventions Nos. 9, 13, 19, 53, 69, 82, 100, 115, 120, 126, 129, 146), ***France**: **Guadeloupe*** (Conventions Nos. 92, 131, 133, 146, 149); ***Gabon*** (Conventions Nos. 26, 99, 105, 111, 144, 158); ***Ghana*** (Conventions Nos. 22, 26, 74, 98, 103, 105, 111, 119, 120); ***Grenada*** (Conventions Nos. 26, 58, 81, 99, 105); ***Guinea-Bissau*** (Conventions Nos. 19, 26, 74, 81, 91, 100, 108, 111); ***Haiti*** (Conventions Nos. 81, 98, 111); ***Honduras*** (Conventions Nos. 81, 98, 111); ***Iceland*** (Conventions Nos. 98, 102); ***Iraq*** (Conventions (continued…)

169. The failure of the governments concerned to fulfil their obligations considerably hinders the work of the Committee of Experts and that of the Conference Committee, and the Committee of Experts cannot overemphasize the special importance of ensuring the dispatch of the reports and replies to its comments on time.

Examination of reports

170. In examining the reports received on ratified Conventions and Conventions declared applicable to non-metropolitan territories, the Committee follows its usual practice of assigning to each of its members the initial responsibility for a group of Conventions. Reports received early enough are sent to the members concerned in advance of the Committee's session. The members submit their preliminary conclusions on the instruments for which they are responsible to all their colleagues for their examination. These conclusions are then presented to the Committee in plenary sitting by their respective authors for discussion and approval. Decisions on comments are adopted by consensus, without prejudice to experts who wish to put forward different opinions, as was the case in the past.

Observations and direct requests

171. In many cases, the Committee has found that no comment is called for regarding the way in which a ratified Convention has been implemented. In other cases, however, the Committee has found it necessary to draw the attention of the governments concerned to the need to take further action to give effect to certain provisions of Conventions or to supply additional information on given points. As in previous years, its comments have been drawn up in the form either of "observations" which are reproduced in the report of the Committee, or "direct requests", which are not published in the report, but are communicated directly to the governments concerned.[14]

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[13](...continued)

Nos. 19, 92, 100, 111, 118, 120, 122, 135, 138, 146, 152); ***Israel*** (Conventions Nos. 91, 92, 111); ***Kuwait*** (Conventions Nos. 105, 111, 119); ***Kyrgyzstan*** (Conventions Nos. 98, 100, 147); ***Latvia*** (Conventions Nos. 87, 98, 100, 105, 115, 119, 131, 142, 149); ***Liberia*** (Conventions Nos. 22, 29, 53, 58, 87, 92, 98, 105, 111, 112, 113, 114); ***Libyan Arab Jamahiriya*** (Conventions Nos. 29, 52, 53, 81, 95, 98, 100, 102, 103, 105, 118, 121, 128, 130, 138); ***Madagascar*** (Conventions Nos. 100, 111, 119, 120); ***Malawi*** (Conventions Nos. 26, 99, 111, 144); ***Malaysia*** (Conventions Nos. 19, 97, 98, 119); ***Mali*** (Conventions Nos. 26, 81, 105, 111); ***Malta*** (Conventions Nos. 73, 111, 119); ***Morocco*** (Conventions Nos. 26, 81, 98, 99, 105, 111, 119, 146, 158); ***Myanmar*** (Conventions Nos. 17, 26, 29, 52, 87); ***Netherlands**: **Aruba*** (Conventions Nos. 69, 74, 87, 94, 95, 101, 122, 129, 135, 137, 138, 145, 146), ***Netherlands**: **Netherlands Antilles*** (Conventions Nos. 33, 69, 74, 87, 106, 122); ***Niger*** (Conventions Nos. 100, 119, 131, 138, 142); ***Nigeria*** (Conventions Nos. 19, 26, 87); ***Paraguay*** (Conventions Nos. 29, 60, 119, 120, 122, 169); ***Philippines*** (Conventions Nos. 17, 98, 110, 111, 144); ***Saint Lucia*** (Conventions Nos. 5, 17, 19, 87, 94, 95, 97, 98, 100, 111); ***Seychelles*** (Conventions Nos. 99, 105); ***Sierra Leone*** (Conventions Nos. 26, 88, 95, 98, 99, 100, 101, 111, 119, 125, 126, 144); ***Somalia*** (Convention No. 111); ***Sri Lanka*** (Conventions Nos. 29, 81, 98, 100, 103, 131, 135, 160); ***Tajikistan*** (Convention No. 111); ***United Republic of Tanzania*** (Conventions Nos. 88, 98, 105, 131, 134, 135, 137, 144); ***Tunisia*** (Conventions Nos. 105, 127); ***Yemen*** (Conventions Nos. 19, 81, 87, 98, 100, 111, 122, 131, 132, 135, 156, 158).

[14] ***Handbook of procedures relating to international labour Conventions and Recommendations***, Geneva, Rev.1/1995, para. 54(k).

172. As in the past, the Committee has indicated by footnotes the cases in which, because of the nature of the problems met in the application of the Conventions concerned, it has seemed appropriate to ask the Government to supply a detailed report earlier than would otherwise have been the case. Under the system of spacing out reports, which applies to most Conventions, such early reports have been requested after an interval of either one or two years, according to circumstances. In some instances, the Committee has also requested the Government to supply full particulars to the Conference at its next session in June 1998.

173. The observations of the Committee appear in Part Two (sections I and II) of this report, together with a list under each Convention of any direct requests. An index of all observations and direct requests, classified by country, is provided at the beginning of this report.

Cases of progress

174. In accordance with its usual practice, the Committee has drawn up a list of the cases in which it has been able to express its satisfaction at certain measures taken by governments to make the necessary changes in their country's law or practice following comments by the Committee on the degree of conformity between national law or practice and the provisions of a ratified Convention. Details concerning the cases in question are to be found in Part II of this report and cover 32 instances in which measures of this kind have been taken in 22 countries and two non-metropolitan territories. The full list is as follows:

State	*Conventions Nos.*
Argentina	42
Brazil	111
Chad	81, 87, 95
Colombia	5, 10, 22
Egypt	111
Guinea	139
India	111
Israel	138
Italy	146
Malta	138
Mozambique	111
Netherlands	133
Panama	98
Peru	139
Romania	98
Sao Tome and Principe	87
Seychelles	87
Singapore	5
Slovakia	111
Spain	24, 102, 113, 131
Switzerland	115
Venezuela	29, 95

State	*Conventions Nos.*
Non-metropolitan territories	
Netherlands: Netherlands Antilles	17
United Kingdom: Isle of Man	98

175. Thus, the total number of cases in which the Committee has been led to express its satisfaction with the progress achieved following its comments has risen to 2,164 since the Committee began listing them in its reports in 1964. In addition, there have been many cases in which the Committee has been able to note with interest various measures that have been taken following its comments with a view to ensuring a fuller application of ratified Conventions. All these cases provide an indication of the efforts made by governments to ensure that their national law and practice are in conformity with the provisions of the ILO Conventions they have ratified.

176. These cases do not, however, as the Committee regularly points out, exhaust the instances in which Conventions and Recommendations have a measurable influence on the law and practice of member States. For example, the Committee has again noted a number of cases this year in which it is clear from the first report on the application of a Convention that new legislative or other measures were adopted shortly before or after ratification.

Practical application

177. As in previous years, the Committee has been concerned with assessing, on the basis of the information available, the extent to which national legislation giving effect to ratified Conventions is applied in practice. A number of questions designed to elicit information on this point are included in the report forms approved by the Governing Body for the Conventions, and the replies of governments to these questions constitute an appreciable, though uneven, source of information on practical application available to the Committee. The Committee has also taken into account other authoritative sources of information. These consist, in particular, of reports from other international or regional organizations, of the annual reports of labour inspection services, statistical yearbooks published in the States or by the ILO, observations of employers' or workers' organizations, compilations of judicial or administrative decisions, reports on direct contacts, reports on technical cooperation projects and missions, and other official publications such as manuals, studies and economic and social development plans.

178. The Committee notes with interest that this year some 84.3 per cent of the reports supplied on Conventions for which information on practical application was specifically requested contained such data. The Committee observes that this percentage is the highest in recent years and welcomes this fact. Nevertheless it reiterates its appeal to all governments to continue to make every effort to include the information requested in their future reports.

179. The following countries have provided information on practical application in more than half the reports concerned: Algeria, Argentina, Australia, Austria, Azerbaijan, Belarus, Belgium, Belize, Brazil, Bulgaria, Burkina Faso, Canada, Chile, Colombia, Cuba, Denmark, Dominican Republic, Egypt, El Salvador, Germany, Finland, France, Greece, Guatemala, Guyana, Hungary, Iceland, India, Islamic Republic of Iran, Ireland, Israel, Italy, Japan, Kenya, Lithuania, Luxembourg, Mauritius, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Norway, Pakistan, Paraguay, Peru, Poland, Portugal, Romania, San Marino, Slovenia, Spain, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Ukraine, United Kingdom.

180. The Committee wishes particularly to thank governments that have given information on practical application in their reports, as this information has greatly helped it in assessing more accurately the extent to which ratified Conventions are actually applied in these countries.

181. As in previous years, the Committee has addressed direct requests to certain countries which have not replied to the questions in the report forms on practical application. The Committee notes that, again this year, the majority of the countries in question are developing countries and that certain of them have referred specifically to difficulties of a financial and/or administrative nature which are preventing them from compiling the statistical and other information requested. The Committee is of the opinion that these are also cases in which technical assistance from the International Labour Office, particularly when provided by the multidisciplinary advisory teams, could assist in overcoming the difficulties in question.

182. The Committee also notes with interest the judicial and administrative decisions on questions of principle relating to the application of ratified Conventions to which certain countries have referred in their reports. It noted that 44 reports contain information of this kind and thereby shed additional light on the problems raised in these cases by the practical application of the Conventions in question.

Sanctions in national law

183. The Committee noted the views expressed in the Conference Committee concerning the appropriateness of sanctions as a means of ensuring the application of ratified Conventions at the national level. It placed the question in the context of the general obligation on member States, in the words of article 19(5)(d) of the ILO Constitution, to "take such action as may be necessary to make effective the provisions" of a ratified Convention. The Committee looked at the ways in which different countries go about fulfilling that obligation: these may range from promotional campaigns, advice, training and education, to inspection leading to either civil remedies or criminal prosecution and sanctions.

184. All of these actions can be invaluable means of ensuring effectiveness of the international or national provisions. Indeed, the mere existence of civil remedies or penal sanctions may have a strong deterrent effect on potential delinquents. Sanctions and remedies themselves may take many forms — penal, civil or administrative — involving fines or even imprisonment, damages, reparations, reinstatement, annulment of decisions or authorizations, etc. The Committee noted the advantage of actively encouraging compliance with Conventions as well as discouraging infringement of them.

185. On the one hand the Committee recalls that several Conventions contain their own specific provisions as to the measures to be taken by ratifying States to secure observance of their substantive requirements; and it stresses that in such cases, where sanctions are envisaged, they must be adequate and effective, failing which there may be breach of both the substantive provision of the Convention and the requirement as to enforcement measures to be taken. In this connection, the Committee has noted that, where countries have made provision for pecuniary penalties or remedies, the main problem that arises relates to their dissuasive effect, in so far as they are often too low and in some cases have not been adjusted to take account of inflation.

186. On the other hand the Committee hopes that governments will in addition give due consideration to the possibility that, in all cases, even in Conventions which do not contain specific provisions in this regard, appropriate sanctions and remedies may well be an effective way of strengthening the application of Conventions. The use and strengthening of sanctions and remedies can be particularly important to ensure the effectiveness of Conventions guaranteeing basic rights. The Committee would urge governments to take all steps available to make certain the implementation of provisions of ratified Conventions is systematically monitored at the national level; and it would be very grateful if, in order to assist the Committee in its task at the international level, governments supplied full information in this respect in their reports under article 22 of the Constitution.

VII. Submission of Conventions and Recommendations to the competent authorities

(article 19, paragraphs 5, 6 and 7, of the Constitution)

187. In accordance with its terms of reference, the Committee this year examined the following information supplied by the governments of member States, pursuant to article 19 of the Constitution of the International Labour Organization:

(a) information on the steps taken to submit to the competent authorities within the time-limit of 12 or 18 months, as provided for in the Constitution, the following instruments adopted at the 83rd Session of the Conference (1996): the Home Work Convention (No. 177) and Recommendation (No. 184);

(b) additional information on the steps taken to submit to the competent authorities the instruments adopted by the Conference from its 31st (1948) to its 82nd (1995) Sessions (Conventions Nos. 87 to 176 and Recommendations Nos. 83 to 183);

(c) replies to the observations and direct requests made by the Committee at its session in November-December 1996.

83rd Session

188. The Committee notes with interest that the governments of the following member States have indicated that they have submitted to the authorities considered by them to be competent the instruments adopted by the Conference at its 83rd Session: Bahrain, Belarus, Central African Republic, Czech Republic, Djibouti, Egypt, El Salvador, Ethiopia, Germany, Greece, Guatemala, Hungary, Iceland, Indonesia, Islamic Republic of Iran, Jamaica, Japan, Jordan, Republic of Korea, Kuwait, Luxembourg, Malaysia, Myanmar, Namibia, Nepal, Nicaragua, Norway, Oman, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Singapore, Slovakia, Slovenia, Tajikistan, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine and United States.

31st to 82nd Sessions

189. The Committee notes with interest that considerable efforts have been made by several governments to submit instruments adopted by the Conference since its 31st Session to the competent authorities, particularly in the following cases: Burkina Faso (77th, 78th, 79th, 80th and 81st Sessions) and Mozambique (78th, 79th, 80th, 81st and 82nd Sessions).

190. The table in Appendix I to section III of Part Two of the report of the Committee shows the position of each member State as it emerges from the information supplied by the governments, with regard to the discharge of the obligation to submit Conventions and Recommendations adopted by the Conference to the competent authorities. Appendix II shows the overall position in this respect for the instruments adopted from the 31st to the 83rd Sessions of the Conference.

General aspects

191. The Committee notes with concern that many countries are late — sometimes very late — in submitting to the competent authorities the instruments adopted by the Conference. In other cases, submission does not appear to have been accompanied by proposals on the action to be taken concerning the instruments being considered.

192. The Committee wishes to emphasize that the submission to the competent authorities of the instruments adopted by the Conference is a fundamental obligation which constitutes the indispensable first step in implementing international labour standards. In order that national authorities may be kept up to date on the standards adopted at the international level, which may require action in each State so as to give effect to them at the national level, submission should be made as early as possible and in any case within the time-limits set by article 19 of the ILO Constitution. Governments, however, remain entirely free to propose any action which they may judge appropriate in respect of Conventions and Recommendations. The principal aim of the submission is to encourage a rapid and responsible decision by each member State on the Conventions and Recommendations adopted by the Conference.

Comments of the Committee and replies from governments

193. In section III of Part Two of this report, the Committee makes individual observations on the points that it considers should be brought to the special attention of governments. In six of these observations (Antigua and Barbuda, Bahamas, Democratic Republic of Congo, Hungary, Libyan Arab Jamahiriya and Paraguay), the Committee has expressed satisfaction at the measures taken to submit instruments to the competent authorities. In addition, requests with a view to obtaining supplementary information on other points have been addressed directly to a number of countries, which are listed at the end of section III.

194. The Committee once again regrets to note that a number of governments have again failed to provide replies to its comments, even after reminders have been sent by the Office in accordance with the request made to it by the Committee (see Part Two, section III of this report). The Committee again expresses the hope that governments will endeavour in future to supply all the required information and documents.

195. The Committee wishes once more to point out the importance of the communication by governments of the information and documents called for in points I and II of the questionnaire in the Memorandum adopted by the Governing Body. Some governments do not communicate the information and documents in question. The Committee trusts that the governments concerned will take suitable measures to comply with the Memorandum on submission to the competent authorities.

Special problems

196. The Committee is bound to note with regret that no information has been supplied by the following 14 governments showing that the Conventions and Recommendations adopted by the Conference during at least the last seven sessions (from the 76th to the 82nd Sessions) have in fact been submitted to the competent authorities: Afghanistan, Cameroon, Guinea, Haiti, Liberia, Madagascar, Saint Lucia, Sierra Leone, Solomon Islands and Yemen. The fact that these countries have accumulated a long backlog in this context is a cause of deep concern to the Committee. Indeed, there is a danger that some of them may find it very difficult to bring themselves up to date. What is more, neither the legislative authorities nor public opinion in these countries are regularly informed of the existence of new instruments as the Conference adopts them, which defeats the real purpose of the obligation to submit explained in paragraph 192 above.

197. In this context, the Committee would like to point out once again that the obligation of submission does not imply that governments must ratify the Conventions or accept the Recommendations in question. Taking into account the explanations given by some States in their reports, the nature and scope of the obligation to submit are indicated in individual observations addressed to these States. The Committee expresses the firm hope that the governments concerned will promptly undertake to submit the instruments adopted at the sessions indicated and that it will be able to note the progress made in this respect in its next report. The Committee finally recalls that governments have the possibility of asking the International Labour Office for the technical assistance which it is able to provide, particularly through the multidisciplinary advisory teams, to endeavour to solve this type of problem.

VIII. Instruments chosen for reports under article 19 of the Constitution

198. In accordance with the decisions taken by the Governing Body, governments were requested to supply reports under article 19, paragraphs 5 and 7, of the ILO Constitution on the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983.

199. A total of 290 reports were requested and 144 received.[15] This represents 49.6 per cent of the reports requested.

200. The Committee notes with regret that, for the past five years, none of the reports on unratified Conventions and Recommendations requested under article 19 of the ILO Constitution has been received from: Afghanistan, Albania, Djibouti, Fiji, Haiti, Lesotho, Liberia, Libyan Arab Jamahiriya, Republic of Moldova, Nepal, Nigeria, Paraguay, Saint Lucia, Solomon Islands, Somalia, Yemen.

201. The Committee can only urge governments once again to provide the reports requested so that its General Surveys can be as comprehensive as possible.

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[15] ILO: Report III (Part 1B), ILC, 86th Session, 1998.

General Survey

202. Part Three of this report (issued separately as Report III (Part 1B)) contains the General Survey of the Committee on questions covered by Convention No. 159 and Recommendation No. 168. In accordance with the practice followed in previous years, the survey has been prepared on the basis of a preliminary examination by a working party comprising five persons appointed by the Committee from among its members.

* * *

203. Lastly, the Committee would like to express its appreciation for the invaluable assistance again rendered to it by the officials of the ILO, whose competence and devotion to duty make it possible for the Committee to accomplish its increasingly complex task in a limited period of time.

Geneva, 12 December 1997.

(Signed) Sir William Douglas,
Chairman.

E. Razafindralambo,
Reporter.

Appendix. List of the 56 member States which have been asked to submit reports on the Forced Labour Convention, 1930 (No. 29), and/or on the Abolition of Forced Labour Convention, 1957 (No. 105)

(article 19 of the Constitution)

Member States	Convention No. 29		Convention No. 105	
	Year of ratification	Article 19	Year of ratification	Article 19
Afghanistan		–	1963	
Armenia		C		C
Azerbaijan	1992			C
Bahrain	1981			R
Bolivia		–	1990	
Bosnia and Herzegovina	1993			R
Bulgaria	1932			C
Cambodia	1969			C
Canada		R	1959	
Chile	1933			R
China		R		R
Congo	1960			–
Democratic Republic of the Congo	1960			–
Equatorial Guinea		–		C
Eritrea		–		–
Ethiopia		R		R
Gambia		–		–
India	1954			C
Indonesia	1950			C
Japan	1932			R
Kazakhstan		R		R
Republic of Korea		R		R
Kyrgyzstan	1992			C
Lao People's Democratic Republic	1964			C
Latvia		C	1992	
Lesotho	1966			–
Madagascar	1960			C
Malawi		–		–
Malaysia	1957			R

Member States	Convention No. 29		Convention No. 105	
	Year of ratification	Article 19	Year of ratification	Article 19
Republic of Moldova		–	1983	
Mongolia		C		C
Mozambique		R	1977	
Myanmar	1955			C
Namibia		R		C
Nepal		R		R
Oman		C		C
Philippines		R	1960	
Qatar		C		C
Romania	1957			R
Russian Federation	1956			R
Rwanda		C	1962	
Saint Kitts and Nevis		C		C
Saint Vincent and the Grenadines		C		C
Sao Tome and Principe		C		C
Singapore	1965			R
Solomon Islands	1985			–
Sri Lanka	1950			R
Tajikistan	1993			–
The former Yugoslav Republic of Macedonia	1991			C
Togo	1960			C
Turkey		R	1961	
Ukraine	1956			C
United States		R	1991	
Uzbekistan		C		C
Viet Nam		R		R
Zimbabwe		R		R

R – Report received for this examination.
C – Report received under ratification campaign.
– – Report not received.

PART TWO

Observations concerning particular countries

I. Observations concerning reports on ratified Conventions
(article 22 of the Constitution)

A. General observations

Armenia

The Committee notes with regret that, for the third year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office. It also notes that the first report due since 1995 on Convention No. 111 has not been received; nor have the first reports due since 1996 on Conventions Nos. 100, 122, 135 and 151. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of these Conventions.

Barbados

The Committee notes that the first report due since 1996 on Convention No. 147 has not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to provide the report due on the application of this Convention.

Bolivia

The Committee notes with regret that, for the third year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Bosnia and Herzegovina

The Committee notes with regret that, for the fourth year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Burundi

The Committee notes with regret that, for the fifth year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office. It also notes that the first reports due since 1995 on Conventions Nos. 87, 100 and 111 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to provide the reports due on the application of these Conventions.

Cyprus

The Committee notes that the first report due since 1996 on Convention No. 171 has not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to provide the report due on the application of this Convention.

Czech Republic

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Grenada

The Committee notes with regret that, for the third year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office. The Committee also notes that the first reports due since 1996 on Conventions Nos. 87, 100 and 144 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of these Conventions.

Kyrgyzstan

The Committee notes with regret that the first reports due since 1995 on Conventions Nos. 133 and 160 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to provide the reports due on the application of these Conventions.

Lao People's Democratic Republic

The Committee notes with regret that, for the second year in succession, the reports due have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to provide the reports due on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Latvia

The Committee notes with regret that the first reports due since 1994 on Conventions Nos. 111, 122, 135 and 151 have not been received. It also notes that those due since 1996 on Conventions Nos. 81, 129, 132, 144, 154, 155 and 158 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of these Conventions, if necessary requesting appropriate assistance from the Office.

Liberia

The Committee notes the evolution of the national situation and trusts that the Government will not fail in future to discharge its obligation to supply all reports on the application of ratified Conventions, including the first report due on Convention No. 133, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Republic of Moldova

The Committee notes with regret that the first report due since 1995 on Convention No. 105 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Myanmar

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all the reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Nigeria

The Committee notes with regret that the first report due since 1995 on Convention No. 144 has not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to provide the report due on the application of this Convention.

Panama

The Committee notes that, following the Office's recommendations, the Government began examination of a draft maritime law in 1981, on the adoption of a labour law for the merchant navy designed to ensure that Panamanian legislation would be compatible with the country's international obligations.

The draft has given rise on several occasions to comments by the Committee and its conformity with the maritime Conventions ratified by Panama has been discussed in the Conference Committee on the Application of Standards.

The Committee notes with interest that on 23 September 1997 the draft law was submitted to the legislative assembly for adoption and expresses the strong hope that the new maritime law will be adopted soon and that it will guarantee full application of the provisions of the maritime Conventions ratified by Panama. It requests the Government to supply a copy of the text once it has been adopted.

Saint Lucia

The Committee notes with regret that, for the sixth year in succession, the reports due have not been received. In trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Seychelles

The Committee notes with regret that the first report due since 1995 on Convention No. 149 has not been received. The Committee trusts that the Government will not fail in future to discharge its obligation on the report due on the application of this Convention.

Sierra Leone

The Committee notes with regret that, for the third year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Somalia

The Committee notes that the reports due have not been received. It hoped that appropriate measures will be taken to ensure application of the Conventions ratified as soon as circumstances so permit.

Uzbekistan

The Committee notes with regret that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all the reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office. The Committee also notes that the first reports due since 1996 on Conventions Nos. 47, 52, 103 and 122 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of these Conventions.

Yemen

The Committee notes with regret that the first report due since 1993 on Convention No. 159 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Yugoslavia

In the light of the decisions adopted by the competent bodies of the United Nations considering that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot automatically ensure the continuity of membership of the former Federal Socialist Republic of Yugoslavia, as well as the inferences drawn from this by the ILO Governing Body, the Committee considers it preferable, in order not to prejudge this question, not to proceed to examine the application of the Conventions ratified by the former Federal Socialist Republic of Yugoslavia.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Afghanistan, Albania, Angola, Antigua and Barbuda, Bahrain, Bangladesh, Barbados, Cameroon, Côte d'Ivoire, Cyprus, Democratic Republic of the Congo, Djibouti, Ethiopia, Gabon, Georgia, Ghana, Guinea-Bissau, Haiti, Honduras, Indonesia, Kuwait, Kyrgyzstan, Latvia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Morocco, Nepal, Nicaragua, Niger, Nigeria, Paraguay, Sao Tome and Principe, Seychelles, Sri Lanka, Suriname, Tajikistan, United Republic of Tanzania, Venezuela, Yemen.***

B. Individual observations

Convention No. 1: Hours of Work (Industry), 1919

Costa Rica (ratification: 1982)

1. Further to its previous observation, the Committee notes that section 146 of the Labour Code has not yet been repealed. It notes the information contained in the Government's report sent in June 1996 according to which the Standing Committee on Social Affairs of the Legislative Assembly approved the repeal in question, and hopes that the Government will be able to provide, in its next detailed report, information on the adoption of the Act repealing section 146 of the Labour Code, to ensure that national legislation and practice in this area are brought into line with the Convention as soon as possible.

2. Furthermore, the Committee requests the Government to provide detailed information in reply to the comments it made in its previous observation which read as follows:

> Referring to the comments it has been making for several years, the Committee notes, once again, that the Government has not supplied any new information on the application of *Articles 2(b) and 6, paragraph 1, of the Convention*. It recalls that, even though ratification of the Convention implies that the latter shall prevail, according to the national Constitution, it is nevertheless necessary to lay down specific provisions on the following matters.
>
> 1. *Article 2(b) of the Convention*. The second paragraph of section 136 of the Labour Code supplements the principle contained in the Constitution in the following manner: *Nevertheless, in work which is not inherently unhealthy or dangerous, a normal working day of up to ten hours and a mixed working day of up to eight hours may be determined, provided that weekly working hours do not exceed 48*. The Committee notes that under the terms of the above-mentioned provision of the Convention, the additional hours authorized shall in no case be more than one hour a day. It requests the Government to indicate how compliance with this provision is ensured in practice.
>
> 2. *Article 6, paragraph 1*. In previous comments, the Committee referred to section 140 of the Labour Code, which provides that normal working hours, plus overtime hours, must not exceed 12 hours per day. The Committee recalls that the exceptions authorized to the above provision of the Convention must remain within reasonable limits, and that regulations on this matter must be adopted by the public authorities. Permitting four hours overtime per day, without any other guarantee, such as a monthly or yearly limit, does not therefore appear to be in conformity with the Convention. The Committee therefore expresses the hope that the Government will supply in its next report information on the measures taken to ensure proper application of this paragraph.

India (ratification: 1921)

The Committee notes the Government's report received in December 1997. It also notes the observation made by the Centre of Indian Trade Unions (CITU), supplied in the report. The Mahabubnagar District Palamoori Contract Labour Union sent an observation to the Office in April 1997 denouncing, inter alia, the 13-hour working day as well as the lack of a weekly rest day for the Palamoori workers in the Goa region. A copy of the communication was sent to the Government which has not, as yet, made any comments. The Committee intends to examine these matters at its 1998 Session.

Kuwait (ratification: 1961)

1. With reference to its previous observation, the Committee notes with interest the adoption of Ministerial Order No. 104/94 fixing the maximum number of additional hours authorized in the private sector at six per week and 180 per year, in accordance with the provisions of *Article 6, paragraph 2, of the Convention*. The Committee notes, however, that these new regulations do not apply to public sector workers who are still governed, in respect of exceptions to normal working hours, by sections 3 and 4 of Ministerial Order No. 34/77, which are incompatible with the provisions of the Convention, since they fix the minimum duration of overtime providing entitlement to compensation instead of defining the maximum duration of authorized overtime, and determine the maximum amount of compensation without taking into account the total duration of the work performed. Recalling the text of *Article 2* which stipulates that the provisions of the Convention are applicable both to public sector and to private sector establishments, the Committee invites the Government to take appropriate measures to adopt regulations similar to Order No. 104/94 applicable to public sector establishments.

2. Furthermore, the Committee draws the Government's attention to the ambiguous nature of the wording of section 1, paragraph 3, of Order No. 105/94 relating to the prohibition of forced labour in private sector enterprises. The text refers to the Act relating to work in the private sector (No. 38/64), while the latter has been the subject of previous comments by the Committee regarding the fact that it does not refer to the monthly or annual limits for authorized overtime, and the abuses to which this could give rise. Since Order No. 104/94 was enacted as a result of these comments, the Committee hopes that the Government will soon take the necessary measures to remove any ambiguity in this regard, by referring either to Order No. 104/94 supplementing the provisions of Act No. 38/64 referred to above, or to the relevant articles of the new Act on work in the private sector.

3. The Committee notes the draft revised version of Act No. 38/64, as amended by the Committee on Labour Standards and Agreements. It would be grateful if the Government would keep the ILO informed of the follow-up to this draft and expresses the hope that it will be adopted in the near future. In this regard, the Committee requests the Government to specify whether the scope of the new Act will extend to temporary workers and to those in small enterprises, as was stated in the Government's last reply to the Committee's comments.

Peru (ratification: 1945)

1. The Committee notes the Government's report and the information provided in reply to its previous observation. It notes that, in the case of the brewery *Backus and Johnston S.A.*, the Supreme Court of Lima handed down a decision confirming that the shift system denounced does not infringe the legislation in force, since provision is made

for it in collective agreements approved by the parties concerned. The Committee also notes that in February 1996 the parties concluded a new collective agreement in order to put an end to the difference of opinion separating them.

2. Furthermore, the Committee notes the information provided by the Government, in accordance with *Article 7, paragraph 1, of the Convention*, on the collective agreements provided for in *Article 5* which have been given the force of regulations.

3. Finally, the Committee notes the adoption of Legislative Decree No. 854 relating to the duration of work, working hours and overtime hours. In this regard, it also notes the comments made by the General Confederation of Peruvian Workers (CGTP). This body alleges that section 2 of the above Decree offers the unreasonable possibility to employers of unilaterally amending the length of the working day, in contravention of the very rules established by collective agreements. In addition, section 2, paragraphs (c) and (d), would enable an employer to employ persons in excess of 12 hours in any one day, provided that the length of the working week does not exceed 48 hours. The trade union Confederation adds that section 3 of the Decree, which enables an employer to extend unilaterally the length of a working day of less than eight hours, violates section 62 of the Peruvian Constitution which guarantees that the provisions of legislation or regulations in force at the time a contract is signed remain applicable to it, notwithstanding the adoption of new legislation or regulations. The Committee notes that the Government has not replied to the allegations made. It considers that the possibilities offered to an employer, under section 2 of the Decree, to fix unilaterally a working day of more than eight hours (paragraph (b)) or the number of working days per week (paragraph (c)) does not form part of the exceptions envisaged by the Convention, in particular in *Article 2(b)*. The Committee requests the Government to reply to the observations made by the CGTP and to take the necessary measures to bring its legislation into conformity with the Convention in respect of the points referred to above.

Convention No. 2: Unemployment, 1919

A request regarding certain points is being addressed directly to *Ukraine*.

Convention No. 3: Maternity Protection, 1919

Chile (ratification: 1925)

Article 3(c) of the Convention. In its previous comments, the Committee drew the Government's attention to the fact that, contrary to this provision of the Convention, the beneficiaries whose income exceeds a certain amount contributed to the cost of medical care during confinement. Given that the Government, which has denounced Convention No. 3 on 3 October 1997, has ratified, in 1994, the Maternity Protection Convention (Revised), 1952 (No. 103), the Committee will in future examine this issue within the framework of the latter and refers the Government to the observation made thereunder.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Cameroon, Guinea, Mauritania*.

Convention No. 5: Minimum Age (Industry), 1919

Colombia (ratification: 1933)

With reference to its previous comments, the Committee notes with satisfaction the adoption of resolution No. 001129 of 30 April 1996, of which section 1 prohibits children under the age of 14 from being employed or working in public or private industrial undertakings, other than the undertakings where only members of the same family are employed, and except for work done by children in technical schools when such work is approved and supervised by public authority, in conformity with *Articles 2 and 3 of the Convention*.

The Committee also notes with interest Decree No. 859 of 26 May 1995 by which the Inter-institutional Committee for the eradication of child labour and the protection of working minors was created. It notes that this Committee consists of several ministers and directors-general, and has a representative of the ILO as permanent adviser, according to section 2 of the Decree.

The Committee requests the Government to supply information on the application in practice of the above resolution and the activities undertaken by the Inter-institutional Committee relating to the application of the Convention.

Lesotho (ratification: 1966)

In its previous observation, the Committee requested the Government to indicate measures taken or envisaged to ensure the effective enforcement in practice of the minimum age set forth by the Convention and the national legislation, including the efforts made by the labour inspectorate *(Article 2 of the Convention)*. It also requested information on measures for the practical enforcement of section 128 of the Labour Code Order No. 24 of 1992, concerning the registers of persons under 16 years of age *(Article 4)*.

The Committee earlier noted the indication in the Government's report that the Ministry of Employment had various projects tailored for getting children out of industrial and commercial undertakings, through activities of some skills training centres. However, the Government further indicated that the majority of participants in the projects are children around the age of 18 already in employment. The Committee notes that the Government has no similar projects for children under the age of 15 years.

As to the labour inspectorate, the Committee notes the indication in the report that inspections have established that there are no children under the age of 15 or 16 in industry.

The Committee requests the Government to continue to include in its reports information on the measures taken to ensure the effective enforcement in practice of the minimum age including, for instance, extracts from official reports and information on the number of inspection visits made, and any practical difficulties encountered.

Singapore (ratification: 1965)

Further to its previous comments, the Committee notes the adoption of the Employment (Amendment) Act, 1995 (No. 36) and the repeal of section 4 of the Employment of Children and Young Persons' Regulations, 1976 by the Employment (Children and Young Persons) (Amendment) Regulations, 1996. It notes with satisfaction that the provision which empowered the Commissioner for Labour to grant written permission to children aged at least 12 and under 14 to work in industrial undertakings was thus repealed, to ensure compliance with *Article 2 of the Convention*.

The Committee also notes with satisfaction that the exception under section 72 of the Employment Act (as amended) to the minimum age set forth in section 68 relates only to work approved and supervised by the Ministry of Education or the Institute of Technical Education and carried out by children in technical schools, and that work done by children under apprenticeship programmes is no longer permitted as an exception, in accordance with *Article 3*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Saint Lucia, Singapore*.

Convention No. 6: Night Work of Young Persons (Industry), 1919

A request regarding certain points is being addressed directly to *Viet Nam*.

Convention No. 7: Minimum Age (Sea), 1920

Colombia (ratification: 1933)

In its previous comments the Committee requested the Government to clarify which provisions were applicable in relation to the minimum age for admission to employment at sea. The Committee notes with interest that pursuant to section 2 of resolution No. 001129 adopted on 30 April 1996 children under the age of 14 years cannot be employed or work on any vessel, except those upon which only members of the same family are employed or work done by children on school-ships, if and when such work is approved and supervised by public authority, in conformity with *Articles 2 and 3 of the Convention*.

The Committee also notes with interest Decree No. 859 of 26 May 1995 by which the Inter-institutional Committee for the Eradication of Child Labour and the Protection of Working Minors was created. It notes that this committee consists of several ministers and directors-general and has a representative of the ILO as permanent adviser, according to section 2 of the Decree.

The Committee requests the Government to supply information on the application in practice of resolution No. 001129 of 1996 and on the concrete activities undertaken by the Inter-institutional Committee relating to the application of the Convention.

* * *

In addition, a request regarding certain points is being addressed directly to *Colombia*.

Convention No. 8: Unemployment Indemnity (Shipwreck), 1920

Seychelles (ratification: 1978)

With reference to the Committee's previous comments, the Government indicates that regulation 10 of the new Merchant Shipping (Masters and Seamen) Regulations 1995 provides for unemployment indemnity to seamen in case of shipwreck or loss of the vessel. The Committee notes this information. It notes that this regulation entitles the seaman to receive wages in respect of each day on which he is unemployed, by reason of the wreck or loss of the ship, during the period of two months. The Committee would, however, like to draw the attention of the Government to the fact that regulation 9, paragraph 1, of the regulations specifies, as did the previously applicable legislation, that in all cases of wreck of the ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim to wages. The Committee is bound to state that the new legislation by imposing this restriction fails to provide full application of *Article 2 of the Convention* which provides for payment to each seaman of an indemnity against unemployment, without any restrictions, for a minimum period of two months, in the event of loss of foundering of the vessel. The Committee hopes that the Government will be able to take the necessary measures in the near future to bring national legislation into conformity with the Convention on this point.

Solomon Islands (ratification: 1985)

The Committee notes with regret that for the fourth time the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session, together with the text of the Labour (Seamen) Rules adopted in 1985, which according to the Government's previous statement, provides for indemnity against unemployment in case of loss or foundering of a ship, without further qualifications, in conformity with this provision of the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Belgium, Dominica, Estonia, Lebanon, Luxembourg, Norway, Seychelles***.

Convention No. 9: Placing of Seamen, 1920

Cameroon (ratification: 1970)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 5 of the Convention.* The Committee notes the information supplied by the Government in its reports for the periods 1989-92 and 1992-93, and particularly the adoption of Act No. 92/007 of 14 August 1992 establishing the Labour Code. The Committee notes that the reports contain no new information in answer to its previous direct requests and that the new Labour Code of 1992 contains no provisions for the constitution of committees which are required under this Article to consist of an equal number of representatives of shipowners and seamen to advise on matters concerning the carrying on of employment offices for seamen. The Committee observes that for several years there has been no progress in giving effect to this Article of the Convention. It is therefore bound to reiterate the hope that the Government will not fail to take the necessary measures in the near future to ensure application of this Article and asks it to indicate in its next report any progress made in this respect.
>
> *Article 10.* The Committee again expresses the hope that in its future reports the Government will provide the statistical or other information required by this Article, and particularly all available information on the activities concerning seamen carried on by the employment offices of Kribi, Limbé and Douala.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Chile (ratification: 1935)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. In its previous comments, the Committee pointed out that *Article 4, paragraph 1, of the Convention* required the Government to organize and maintain an efficient and adequate system of public employment offices "for seamen" without charge. The work of employment offices must be administered by "persons having practical maritime experience" *(paragraph 2)*.
>
> The Committee notes the placement activities undertaken by the National Vocational Education and Employment Service, through municipal employment offices, and private employment agencies [Presidential Decree No. 146, of December 1989, to approve the regulations issued under Legislative Decree No. 1, of 1989 respecting training and employment]. Private employment agencies have to register with the National Service and may be established by a workers' union or a trade union organization. The Government considers that it is an efficient and adequate system not only "for seamen", but also for the other workers in the country. In practice, the representative associations of shipowners and the trade unions of seamen maintain constant relations which promote the speedy placement of staff to the satisfaction of both parties. All these operations, according to the Government, are administered by persons with broad practical maritime experience.
>
> The report form adopted by the Governing Body requests data on the number of applications for employment received, the number of vacancies notified and the number of seamen placed in employment. The Government states that there are no special statistics for seamen.
>
> The Committee is bound to emphasize that data on the organization of the system of offices for finding employment for seamen without charge (see also Article 10, paragraph 1) contribute to ensuring that full effect has been given to the above provisions of the Convention. The Committee therefore trusts that in the near future the Government will be in a position to supply the above data on the placement of seamen in order to ensure the full effectiveness of "an efficient and adequate system of employment offices for finding employment for seamen without charge".
>
> 2. *Article 5*. In its previous comments, the Committee noted that this provision requires committees consisting of "an equal number of representatives of shipowners and seamen" to be constituted. In its report, the Government states that there are no special committees consisting of shipowners and seafarers constituted to monitor the efficient and adequate operation of the offices for finding employment for seamen without charge.
>
> The Committee is bound to express once again the hope that the Government will provide further information on cases in which committees consisting of an equal number of representatives of shipowners and seamen have been consulted in all the aspects of the operation of the offices for finding employment for seamen without charge.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Colombia (ratification: 1933)

The Committee notes the information supplied by the Government which replies partly to its previous comments.

1. *Article 2 of the Convention*. The Committee notes that the Government indicates that it has examined the situation which examination revealed that there is only one employment agency for seafarers who are properly registered. The Committee requests that the Government confirm that this is the only agency either by registration or in practice which purports to continue fee-charging operations pursuant to Decree No. 1433 of 1983. The Committee also requests the Government to indicate what measures it

has taken or envisages to take to ensure that it gives full effect to this Article of the Convention which prohibits fee-charging placement, or placement of seafarers by a commercial enterprise for pecuniary gain.

The Committee also requests the Government, once again, to supply detailed information on sanctions imposed on agencies or offices for violations of the provisions of this Article of the Convention.

2. The Committee has noted the draft decree relating to application of Act No. 129 of 1931 ratifying the Convention. Noting that its provisions are designed to give effect to *paragraph 1 of Article 2* as well as *Article 4 of the Convention* it would be grateful if the Government would inform it on the progress of this draft.

3. The Committee notes that the Government's report does not provide the information requested in its previous comments concerning the application of *Articles 4, 5 and 10, paragraph 1, of the Convention*. It therefore reminds the Government of the terms of its previous observation which was as follows:

> *Article 4.* The Committee notes the information concerning the reorganization of the employment service which is still under way, and in particular, the devolution of the function of promoting and carrying out the administration of a free public employment service to the National Service of Apprenticeship (SENA). The Government indicates, however, that there is no specific regulation of such service in regard to seafarers, though it is contemplated in the above-mentioned Act No. 50 as far as temporary workers are concerned. The Committee reiterates its hope that the Government will not fail to adopt the necessary measures as soon as possible with a view to give full effect to the provisions of this Article which requires the organization of an efficient and adequate system of public employment offices for finding employment for seafarers without charge.
>
> *Article 5.* The Committee notes with regret that the Government's report contains no information on any measures taken in order to give effect to this Article, which provides for consultations to be held with representatives of shipowners and seafarers through committees constituted to advise on matters concerning the carrying on of public employment offices for seafarers. It once again expresses the hope that such measures will be taken in the very near future and asks the Government to provide, in its next report, information on any progress made in this regard.
>
> *Article 10, paragraph 1.* The Committee would be grateful if the Government would continue to supply information, statistical or otherwise, concerning unemployment among seafarers and concerning the work of employment agencies for seafarers, as required by this Article of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Djibouti (ratification: 1978)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 5 of the Convention.* The Committee notes from the Government's reply to the Committee's earlier comments that there is no advisory committee consisting of an equal number of representatives of shipowners and seafarers in the country. The Committee recalls in this connection that this Article provides for the establishment of such committees to advise on matters concerning the carrying on of public employment offices for finding employment for seafarers. With reference to the comments the Committee has been making on this subject over a number of years, it expresses the hope that the Government will not fail to adopt measures in the near future in order to establish such advisory committees and to give effect to this Article of the Convention. It asks the Government to provide, in its next report, information on any progress achieved in this regard.

> *Article 10, paragraph 1.* Please provide statistical information as soon as it is available, concerning the number of seafarers registered and the number of placements of seafarers carried out by the Maritime Affairs Service.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Greece (ratification: 1925)

The Committee notes the information provided by the Government in reply to its previous comments.

Article 2 of the Convention. The Committee notes the information concerning the new provisions to supplement Act No. 2298/95 and to diversify the penalties applicable to those responsible for violating this provision of the Convention, including prison sentences in addition to the fines already established. The Committee would be grateful if the Government would provide with its next report copies of the texts relating to these provisions.

Article 8. Recalling once again the Government's statement that it does not see the need to give effect to this provision of the Convention, the Committee would like to emphasize that members are bound by each of the provisions of a ratified Convention. The Committee hopes that the Government will adopt appropriate measures in order to give effect to this Article of the Convention which imposes on each State ratifying the Convention the obligation to take steps to see that the facilities for employment of seamen provided for in this text shall be available for the seamen of all countries which ratify the Convention.

The Committee also draws the Government's attention to the possibility of examining the ratification of the Recruitment and Placement of Seafarers Convention, 1996 (No. 179). Convention No. 179, which is a revised version of the present Convention, and does not contain the obligation prescribed in *Article 8*.

The Committee requests the Government to provide information in its next report on any progress made.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Croatia, Italy, New Zealand, Norway, Poland, Slovenia.*

Information supplied by *Finland* and the *Netherlands* in answer to a direct request has been noted by the Committee.

Convention No. 10: Minimum Age (Agriculture), 1921

Belize (ratification: 1983)

The Committee notes with interest that the National Committee for Families and Children has been established and has conducted a seminar on child labour. According to the Government, the objectives of this seminar were to sensitize the community to the meaning, causes and ill effects of child labour practices, and to discuss at the basic level the various ways of monitoring these practices with a view to drafting a programme of action and projects to minimize its negative effects. The consensus of this seminar was that, in order to determine the approach and strategies to deal with the problem of child labour, it was necessary to undertake the relevant research to assess the present situation.

The Committee requests the Government to continue to supply further information on the activities of the National Committee for Families and Children, in particular the outcome of the research on the present situation of child labour in Belize and any relevant programme of action or projects, with particular reference to the agricultural sector covered by the Convention.

Colombia (ratification: 1983)

The Committee notes with satisfaction the adoption of resolution No. 001129 of 30 April 1996, section 3 of which prohibits children under the age of 14 to work in the agricultural sector during the hours of school attendance, in conformity with *Article 1 of the Convention*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Barbados, Central African Republic, Chile, Colombia, Djibouti, Dominican Republic, Guinea, Guyana, Hungary, Panama, Papua New Guinea, Peru, Senegal, Seychelles, Slovakia, Sri Lanka*.

Convention No. 11: Right of Association (Agriculture), 1921

Burundi (ratification: 1963)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that the Government had indicated in its previous reports that Legislative Decree No. 1/90 of 25 August 1967 respecting rural associations gives effect to the Convention. It also notes that this text provides that, in the case of public funding, the Minister of Agriculture may establish rural associations (section 1), that membership of such associations is compulsory (section 3) and that the Associations' statues are established by the Minister (section 4). It also provides that the obligations of members of these associations include the performance of services in the interest of common enterprise, payment of a single or periodic contribution, the provision of agricultural or livestock products and the observance of rules of cultural or other discipline (section 7), and that failure to fulfil these obligations is punishable by seizure of the member's possessions (section 10).
>
> The Committee considers that the Legislative Decree respecting rural associations which imposes the above obligations on agricultural workers, does not give effect to the Convention. It therefore ask the Government in its next report to indicate the measure that have been taken or are contemplated to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers *(Article 1 of the Convention)*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to *Seychelles*.

Convention No. 12: Workmen's Compensation (Agriculture), 1921

Colombia (ratification: 1933)

In previous comments, the Committee requested further information and statistics on the effective extension of the social security scheme in respect of employment injury to agricultural wage-earners coming under the scope of the Convention. In reply, the Government states that many laws exist to ensure protection of workers; that coverage of the entire working population is 20 per cent; and that 8 per cent of the covered workers are in the primary sector which would include agricultural workers.

The Committee notes this information. It points out that it is difficult to assess the progress made in extending the application of the Social Security Act No. 100 of 1993 to the agricultural sector, due to the lack of more precise statistics on the number of insured employees in agriculture in relation to the total number of agricultural employees, as well as the lack of statistics from previous years which would provide an indication of progress. It would appreciate receiving more detailed data in the Government's next report in order to assess the compliance of the employment injury scheme to the agricultural sector with the provisions of the Convention.

Nicaragua (ratification: 1934)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. In its previous comments the Committee has requested the Government to provide information on the extension to all agricultural wage-earners of the benefit of the *social security* laws and regulations which provide for the compensation of workers for personal injury by accident arising out of or in the course of their employment, in accordance with *Article 1 of the Convention*. In its reply the Government states that at present the social security scheme is applied to all workers employed in the rural areas irrespective of their professional activity. The Committee notes this information. It also notes, according to the Quarterly Statistical Report of the Nicaraguan Institute of Social Security and Welfare (INSSBI) for the second quarter of 1993, supplied by the Government with its report on Convention No. 17, that in practice social security coverage has shown a clear downward trend and that the social security system counted only 10,679 contributors in the rural areas of the country. In this situation the Committee would like the Government to indicate measures taken to extend progressively the coverage of the social security to rural areas, so that all agricultural wage-earners benefit in practice from the protection provided by the social security scheme in case of employment injuries.
>
> 2. The Committee notes the Government's statement concerning social security benefits provided for workers in rural areas. It therefore once again hopes that the Government will have no difficulty in repealing section 103 of the Labour Code (which allows judges to reduce the compensation due to workers sustaining occupational injury in small agricultural enterprises) in order to grant all agricultural wage-earners the same benefits as those granted to other wage-earners, in accordance with the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to *Estonia*.

Information supplied by *Mexico* in answer to a direct request has been noted by the Committee.

Convention No. 13: White Lead (Painting), 1921

Requests regarding certain points are being addressed directly to the following States: *Nicaragua, Romania, Slovenia.*

Information supplied by *Austria, Djibouti, Mexico, Netherlands* and *Uruguay* in answer to a direct request has been noted by the Committee.

Convention No. 14: Weekly Rest (Industry), 1921

Bolivia (ratification: 1954)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In earlier comments, the Committee noted that under section 31 of Decree No. 244 of 1943 (a regulation issued under the General Labour Law), an employer may grant to a worker, in the event of work on the weekly rest day, either compensatory rest or compensatory remuneration. In a report received in February 1991, the Government indicated that the General Labour Law was in the process of revision with the technical assistance of the ILO. In its report for 1994 on the application of several Conventions, including Convention No. 14, the Government indicates there have been no legislative changes.
>
> The Committee must recall that *Article 5 of the Convention* provides for, as far as possible, compensatory periods of rest in cases where exceptions have been made regarding the right to weekly rest. In this regard, the Committee once again points out that section 31 of Decree No. 244 allows more latitude to the employer than is envisaged under the Convention. It hopes that the new legislation will be adopted as soon as possible, with a provision to ensure that workers employed on a weekly rest day are granted a compensatory rest. It requests the Government to indicate the progress achieved in this respect and to supply a copy of the relevant text when it is adopted.
>
> The Committee also requests the Government to refer to the comments that it has made under Convention No. 106.

The Committee again expresses the hope that the Government will make every effort to take the necessary action in the very near future.

Convention No. 16: Medical Examination of Young Persons (Sea), 1921

Requests regarding certain points are being addressed directly to the following States: *Albania, Azerbaijan, Bangladesh, Barbados, Brazil, China, India, Jamaica, Mexico, New Zealand, Seychelles, Solomon Islands.*

Information supplied by *Spain* has been noted by the Committee.

Convention No. 17: Workmen's Compensation (Accidents), 1925

Kenya (ratification: 1964)

In response to the Committee's previous comments, the Government specifies that the Work Injury Benefits Insurance Scheme Bill has been amended and forwarded to the competent authorities for enactment. The Committee notes this information. It observes, however, that the Bill provided by the Government does not seem to have incorporated the new amendments. The Committee hopes that the Bill, to which the Government has referred since 1990, will be adopted soon and that it will enable full effect to be given to the provisions of the Convention, by taking into account the following specific points.

Article 2, paragraph 2, of the Convention. Further to the Committee's comments, the Government refers to section 22(1) of the Bill which provides for the maintenance of protection in respect of workmen's compensation for accident where a worker is temporarily employed abroad. While noting this information, the Committee recalls that its comments related to section 22(2) of the Bill which, contrary to this provision of the Convention, excluded from compensation for accidents workers ordinarily employed abroad but temporarily employed in Kenya by an employer who carries on business chiefly outside Kenya, subject to international agreements.

Article 5. (a) The Government specifies that the final Bill has been amended to bring section 48 into line with section 56. Consequently, the Committee hopes that in its final version section 48 will provide for the payment of the compensation in a lump sum only for victims whose degree of incapacity does not exceed 20 per cent and for whom the competent authority is satisfied that the lump sum paid will be properly utilized. (b) In addition, the Committee recalls that it would be desirable to replace, in sections 4(1)(b) and 50(1) of the Bill, the term "accident" by the term "death", so as to take account of the situations in which the death of an injured workman occurs well after the accident has taken place.

Article 7. In response to the Committee's comments, the Government indicates that, although the additional compensation paid in case of incapacity requiring the constant help of another person which is provided for in section 57 of the Bill may be limited to a particular period, the insurance scheme director may extend this compensation depending on the injured worker's condition. The Committee recalls that the additional compensation must be paid for as long as the injured worker's state of health so requires. Consequently, the Committee hopes that, in practice, at the end of each period for which the additional compensation has been granted, the competent authority will ensure that an injured worker whose state of health so requires continues to receive the additional compensation for a further period.

Articles 9 and 10. (a) The Committee recalls that section 9(2) of the Bill, which sets a ceiling for the reimbursement of expenses relating, in particular, to medical, surgical, pharmaceutical and hospital treatment, and to the supply and renewal of artificial limbs and surgical appliances, does not comply with this provision of the Convention which guarantees injured workers the right to such medical aid as is recognized to be necessary in consequence of their accidents.

(b) In addition, the medical aid must be granted irrespective of the duration of the injured worker's incapacity for work and from the day on which the accident occurs. Consequently, in the definition of "accident", given in section 2 of the Bill, the phrase "for more than three consecutive days, excluding the day of the accident and any Sunday, or if Sunday is not a rest day, one rest day" should be deleted. This is all the more necessary, since section 36(2) of the Bill already provides for a waiting period of three days for the payment of cash benefits, where the duration of the incapacity does not exceed three weeks.

The Committee trusts that, in its final version, the Bill will take account of the comments made above and that the Government's next report will provide details of its enactment.

Myanmar (ratification: 1956)

The Committee notes that for the second consecutive year the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. In reply to the Committee's previous comments the Government indicates that the enactment of new labour laws, including the Workman's Compensation Act, should be made only after the adoption of the new state Constitution with a view to making them in line with the provisions contained therein. The Committee notes this information. In view of the fact that it has been commenting on the application of the Convention since 1959 and that the revision of the Workman's Compensation Act has been referred to several times by the Government since 1987, the Committee can only express once again the hope that the new Workman's Compensation Act will be adopted in the very near future so as to provide in particular:
>
> (a) in accordance with *Article 5 of the Convention*, that the compensation payable to the injured workman or his dependants, where permanent incapacity or death results from the injury, shall be paid in the form of periodical payments, provided that it may be wholly or partially paid in a lump sum if the competent authority is satisfied that this will be properly utilized;
>
> (b) in conformity with *Article 10*, that no maximum amount shall be fixed for the supply and normal renewal of such artificial limbs and surgical appliances as are recognized to be necessary;
>
> (c) in conformity with *Article 11* that measures be taken to ensure in all circumstances the payment of compensation to victims of industrial accidents or their dependants in case of insolvency of the employer or insurer.
>
> 2. The Committee requests the Government to supply information on the number of protected employees under the Workman's Compensation Act and the social security legislation respectively in relation to the total number of employees who are working in industrial and commercial undertakings, as well as the amount of benefits provided under these two laws in case of industrial accidents.

Saint Lucia (ratification: 1980)

The Committee notes with regret that once again the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 7 of the Convention*. The Committee notes that Regulations No. 37 of 1984 do not, as set out in this provision of the Convention, provide for the provision of additional compensation to victims of accidents who suffer incapacity and require the constant help of another person. The Committee therefore hopes that the Government will take the necessary steps to give effect to this provision of the Convention.
>
> *Articles 9 and 10*. In its previous comments, the Committee drew the Government's attention to the fact that, contrary to this provision of the Convention, section 52(1) of the National Insurance Act No. 10 of 1978 limits to a prescribed amount the right to medical assistance and the provision of artificial limbs. In view of the fact that the Regulations issued under the Act do not appear to contain provisions in this connection, the Committee hopes that the Government will take the necessary steps to secure the application of these Articles of the Convention, which do not fix any maximum amount as regards such benefits.
>
> The Committee also requests the Government to indicate whether the medical treatment set out under section 52(1) of Act No. 10 of 1978 also covers pharmaceutical assistance and the supply, repair and renewal of artificial limbs, in accordance with these provisions of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Uganda (ratification: 1963)

Article 5 of the Convention. The Committee notes the information contained in the Government's report that the revised legislation on workmen's compensation takes account of the provisions of *Article 5 of the Convention*. The Committee cannot but reiterate the hope that this legislation will be adopted in the near future and that it will ensure, in accordance with this provision of the Convention, that employment injury compensation for permanent incapacity or death is paid in the form of periodical payments throughout the contingency unless the competent authority is satisfied that a lump-sum payment will be properly utilized. The Committee asks the Government to indicate any progress made in this respect and to provide a copy of the new law as soon as it has been adopted.

[The Government is asked to report in detail in 1998.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bahamas, Mozambique, Nicaragua, Philippines*.

Convention No. 18: Workmen's Compensation (Occupational Diseases), 1925

Sao Tome and Principe (ratification: 1982)

With reference to its previous comments, the Committee notes that no progress has been made to supplement existing legislation in order to include a detailed list of occupational diseases and related work, in accordance with *Article 2 of the Convention*. The Government states in its report, furthermore, that the Social Security Institute is awaiting publication by the Ministry of Health of lists of occupational diseases in order to allocate compensation. In these circumstances and in view of the importance of the matter, the Committee can only stress once again to the Government that the necessary measures should be taken in the very near future to adopt a list of occupational diseases including at least those set forth in the Schedule appended to *Article 2 of the Convention* — diseases which shall be recognized as such in the event that they are contracted in the circumstances set out in the Schedule.

The Committee trusts that the Government will indicate in its next report that progress has been made in this regard.

* * *

In addition, a request regarding certain points is being addressed directly to *Pakistan*.

Convention No. 19: Equality of Treatment (Accident Compensation), 1925

Central African Republic (ratification: 1964)

With reference to the comments which it has made for many years, the Committee has noted the information provided by the Government according to which the Employment Department envisages making the necessary amendments to bring its legislation into conformity with the Convention as part of the overall programme to review legislative and regulatory texts on labour-related matters. The Committee is obliged once again to remind the Government of the need to supplement section 27 of Act No. 65-66 of 24 June 1965 on workmen's compensation for accidents so as to guarantee for the dependants (survivors) of a worker who was a national of a State bound by the Convention, who were not resident in the Central African Republic at the time the victim died and continue not to be resident there, the benefit accruing from the survivors' pension paid under this legislation. The Committee trusts that the amendments will be adopted in the very near future and it wishes to remind the Government of the possibility of seeking technical assistance from the ILO.

[The Government is asked to report in detail in 1999.]

Iraq (ratification: 1940)

The Committee notes with regret that the Government's report simply reproduces the text of its report of 1994 and does not contain a reply to the Committee's previous comments. In this situation the Committee cannot but repeat its previous observation which read as follows:

> In reply to its previous comments the Government refers mainly to certain provisions of the Workers' Pension and Social Security Law, No. 39 of 1971, without supplying the detailed information on the points raised by the Committee, which dealt in particular with the follow-up of the conclusions and recommendations, approved by the Governing Body at its 250th (May-June 1991) Session, of the Committee set up to consider the representation made by the Federation of Egyptian Trade Unions under article 24 of the ILO Constitution alleging non-observance by Iraq of a number of Conventions. In this situation the Committee hopes that the Government will not fail to supply a report for examination at its next session which will contain detailed information on the following points:
>
> 1. (a) The Government is requested to indicate any other provisions (apart from Decision No. 603 of 1987) or contractual conditions which may affect the right of foreign workers engaged in state enterprises, such as arms factories, to receive compensation for industrial accidents both in Iraq and in the country of their new residence.
>
> (b) As regards the situation of temporary workers, to whom Decision No. 603 applies, please indicate which provisions of the legislation ensure the right of such workers to receive compensation in the case of industrial accidents, particularly in cases where they terminate their service before the expiration of the fixed period of employment or the completion of the work for which they were engaged (see also under point 2 below).
>
> 2. (a) In its previous comments, the Committee observed that under section 38(b)(ii) of Law No. 39 of 1971, which provides for the payment of compensation abroad to an Arab citizen if he has "returned to *his* country at the *end* of his insured period of service", Arab workers who leave Iraq *before* their contract period has expired or who settle in a country *other* than their country of origin, may be refused payment of compensation due to them. On the other hand, under the same provisions no such restrictions are applied in respect of Iraqi workers. The Committee recalls in this respect that in its previous report the Government stated that Instruction No. 2 of 1978 regarding payment of social security pensions to insured persons leaving Iraq was being studied by the Government with a view to its revision. The Committee, therefore, once again expresses the hope that the Government will not fail to indicate the legislative measures taken or contemplated to ensure equality of treatment between nationals of Iraq and Arab workers in respect of compensation for industrial accidents, particularly in the case of their residence abroad, including the modifications to Instruction No. 2 of 1978. Please supply a copy of the text of such legislative measures, when adopted.
>
> **(b) As regards nationals of States bound by the Convention other than Arab countries, the Committee recalls that under section 38(b)(iii) of Law No. 39 of 1971, no payment of benefits is made outside Iraq except under reciprocity agreements or international labour Conventions and subject to the necessary authorization under Instruction No. 2 of 1978. Please indicate measures taken or contemplated at the level of the Iraqi Institute of Social Security to ensure, without any restrictions, that in all cases compensation benefits are paid**

> to all workers who are nationals of a country bound by the Convention, in their new country of residence.
>
> 3. The Committee notes, from the information supplied by the Government representative in the discussion in the Conference Committee in 1994 on the application of Convention No. 118 by Iraq, that the Government intends to pay benefits due to foreign workers, including Egyptian workers, who left Iraq in 1990, once the economic embargo imposed on Iraq is lifted, and after the release of Iraq's frozen assets in foreign banks and the improvement of the national economic situation. The Committee would like the Government to continue to provide information on any measures taken or contemplated with a view to resuming payment of compensation for industrial accidents to beneficiaries residing abroad, accompanied by the relevant statistical data. Please also indicate whether workers who left Iraq at the time of the war and who had no opportunity to present their requests for payment of the compensation due to them, may do so from their new place of residence abroad and, if so, in what way.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Malaysia

Peninsular Malaysia (ratification: 1957)

Sarawak (ratification: 1964)

1. The Committee notes that the Government's report has not been received. It notes, however, the detailed discussion which took place at the 1997 Conference Committee particularly on Malaysia's application of Article 6, paragraph 1(b), of the Migration for Employment Convention (Revised), 1949 (No. 97), raising similar problems to those considered under Convention No. 19.

2. The Conference Committee concluded that the level of benefit in case of industrial accident was lower for foreign workers than for nationals. It stressed that equality of treatment between nationals and foreign workers could not be bargained away, even with the consent of the workers, and that legislative amendments which had been adopted only served to increase the ceiling on lump-sum benefits and did not provide for periodic payment. It once again insisted that the Government adopt necessary measures so that foreign workers benefited from the same conditions as nationals. That Committee asked the Government to furnish detailed information to the Committee of Experts and hoped to be in a position to look at the case again at its next session, if it was judged appropriate.

3. In the absence of a report from the Government on Conventions Nos. 19 and 97, the Committee must repeat its previous observation which read as follows:

> *Article 1, paragraph 1, of the Convention.* In its previous comments, the Committee noted that accident compensation coverage for foreign workers has been transferred from the Employees' Social Security Scheme (governed by the Employees' Social Security Act, 1969) to the Workmen's Compensation Scheme (governed by the Workmen's Compensation Act, 1952) as of 1 April 1993, and that the level of benefits in case of industrial accident provided under the Workmen's Compensation Scheme is substantially lower than that provided under the Employees' Social Security Scheme. Consequently, it hoped that the Government would take the necessary steps in the near future to place foreign workers back under the Employees' Social Security Scheme under the same conditions as nationals, thereby providing equal treatment under the law for compensation for industrial accidents. This case was also discussed during the 1996 Session of the Conference Committee, which drew similar conclusions.

> The Government points out in its report that certain categories of nationals are not covered under the Employees' Social Security Act; that the States sending migrant workers to Malaysia endorse the removal of foreign workers from the Employees' Social Security Act; and that foreign workers voluntarily consent to this arrangement when accepting work in Malaysia. Furthermore, it states that the Workmen's Compensation Act has been amended.
>
> The Committee notes this information. It would first like to clarify that the principle of equality of treatment between nationals and non-nationals concerning workers' compensation as provided for under *Article 1(1) of the Convention*, cannot be bargained away, even with the consent of the worker. As to the endorsement of the arrangement by the States sending migrant workers to Malaysia, the Convention does allow in *Article 2* for special agreements to be made between the Members concerned, but only in respect of workers temporarily or intermittently employed in the territory of one Member on behalf of an undertaking situated in the territory of another Member. In the present case, this provision is not applicable.
>
> Second, the Committee points out that the amendment to the Workmen's Compensation Act merely increases the ceiling on lump-sum benefits and does not transform the benefit into a periodic payment equivalent to that provided under the Employees' Social Security Act. Therefore, in light of the fundamental importance of the principle of equality of treatment concerning workers' accident compensation, the Committee cannot but once again express the hope that the Government will take the necessary measures in the near future, such as by placing foreign workers back under the scope of the Employees' Social Security Act in the same conditions as nationals, in order to ensure that the benefit foreign workers receive for work injury is equal to that paid to nationals.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sao Tome and Principe (ratification: 1982)

In its previous comments, the Committee drew the Government's attention to the fact that section 12 of Act No. 1/90 on social security, which provides that the general system covers foreign workers working on the national territory only in so far as a Convention or an agreement concluded with the country of origin of the person concerned so provides, was contrary to *Article 1, paragraph 1, of the Convention*. In fact, the Convention makes it incumbent on any State which has ratified the instrument to grant to the nationals of any other State which has ratified the Convention the same treatment in respect of compensation for industrial accidents as it grants to its own nationals, as a matter of law and regardless of the conclusion of reciprocal agreements. In its report, the Government indicates that under existing provisions workers from African Portuguese-speaking countries, and specifically Cape Verde, Angola and Mozambique, who were working in Sao Tome before independence are covered by the social security system. It adds that, in accordance with the Committee's comments, it will make amendments to Act No. 1/90 with technical assistance from the Office. The Committee notes this information. It hopes that the Government will be able to take the necessary measures to amend the provisions of section 12 of Act No. 1/90, and thus guarantee to all foreign workers who are nationals of a country that has ratified the Convention the benefit of legislation concerning compensation for occupational accidents on the same conditions as for national workers. The Committee hopes that the Government's next report will contain information on progress made in this respect.

Syrian Arab Republic (ratification: 1960)

Article 1, paragraph 2, of the Convention. The Committee refers to its observation concerning Convention No. 118, *Article 5*.

[The Government is requested to supply a detailed report in 1999.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Brazil, Burundi, Comoros, Cuba, Djibouti, Guinea-Bissau, Indonesia, Islamic Republic of Iran, Lebanon, Nigeria, Saint Lucia, Sao Tome and Principe, Slovenia, Swaziland, Tunisia, Yemen***.

Information supplied by ***Algeria*** in answer to a direct request has been noted by the Committee.

Convention No. 20: Night Work (Bakeries), 1925

Bolivia (ratification: 1973)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee has been formulating comments for many years on the necessity to take measures to give full effect to several provisions of Conventions Nos. 1, 20 and 30.
>
> The Government reiterates in the reports provided this year that these comments have been taken into account in the preliminary draft of the new General Labour Law, prepared with the technical assistance of the ILO. Furthermore, it states that the preliminary draft has been sent to the central organizations of employers and workers (CEPB and COB) for their comments, before the finalized draft is submitted to the National Congress for adoption. The Committee trusts that the new legislation will be adopted in the near future and that it will be in full conformity with the above-mentioned Conventions. It requests the Government to supply detailed information on all relevant developments on the matter.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Chile (ratification: 1933)

The Committee notes the Government's report for the period 1994-96 which contains information in response to its previous observation. The Committee observes that much of the information was already given in the previous report. It notes, however, that, according to the Government, the tripartite committee established to examine the compatibility of national legislation with ILO Conventions has held no discussions and received no comments from representative organizations on the application of the Convention.

The Committee notes that there is no specific legislation on night work other than the provisions of the Labour Code which protect minors and pregnant women, and recalls that for many years it has been asking the Government to adopt measures to ensure compliance with the prohibition laid down in *Article 1 of the Convention*. The various articles of the Labour Code cited by the Government, under which night working hours may be determined by collective bargaining are not such as to provide this guarantee. The Government is therefore asked to take the necessary steps to bring national legislation and practice into conformity with the Convention so as to ensure fulfilment of the obligations it undertook on ratifying the Convention. The Government is requested to report on any progress made in this respect in the near future.

Convention No. 22: Seamen's Articles of Agreement, 1926

Colombia (ratification: 1933)

1. With reference to its previous comments, the Committee notes with satisfaction that Decree No. 1015 of 16 June 1995, which issues the law approving the Convention, ensures conformity of the legislation with *Article 1, Article 2, Article 3, Article 4, Article 5, paragraph 1; Article 6, paragraphs 1 and 2, Article 8, Article 9, paragraphs 1 and 2, Article 10, Article 11, Article 12 and Article 13, paragraph 1, of the Convention.*

2. With regard to *Article 5, paragraph 2, of the Convention*, the Committee noted in its previous comments that the seafarers' discharge book provided by resolution No. 00591 of 1982 provides for mention of any misconduct on the part of the seafarer and the penalties imposed by captains and employers; this is in breach of this Article of the Convention which prohibits comments on the quality of the work on board. The Committee hopes that the Government will supply information on the measures taken or envisaged to ensure application of the Convention in this matter.

3. The Committee is also addressing a direct request to the Government on some other matters relating to the application of *Article 6, paragraph 3(3) and (8), Article 7, Article 9, paragraph 3, and Article 14, paragraph 2, of the Convention.*

Liberia (ratification: 1977)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information contained in the Government's report, which refers to Liberian Maritime Law and the corresponding regulations, as amended up to 1992.
>
> *Article 3, paragraph 4, of the Convention.* The Committee notes that under Regulation 10.320(1) a foreign language version of the articles of agreement may be appended to the English version. The Committee points out that the above-mentioned regulation goes in the direction of meeting the requirement of this provision of the Convention. However, in order to ensure full compliance with the Convention in the case of a seafarer who does not understand English, it is necessary to have the contract written in a language he understands and that, if need be, the representative of the competent authority or the master, in the presence of witnesses, should explain the contents of the contract. The Committee asks the Government to indicate the measures taken or under consideration to ensure that full effect is given to this provision of the Convention.
>
> *Article 9, paragraph 2.* The Committee notes that, under section 323(4) of Liberian Maritime Law, where articles of agreement are not for a stated period they expire at the end of one year, provided that at least five days' prior notice has been given. It draws the Government's attention to the fact that national law must prescribe the manner of giving notice, so as to preclude any subsequent dispute between the parties. Please provide all useful information on this matter.
>
> *Articles 13 and 14, paragraph 2.* Please indicate the measures taken or contemplated to ensure the application of these provisions of the Convention.
>
> *Point V of the report form.* Please give a general appreciation of the manner in which the Convention is applied.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mexico (ratification: 1954)

Article 9, paragraph 1, of the Convention. The Committee has indicated in comments for many years that the provision of section 209(III) of the Federal Labour Act providing that seafarers may not be discharged when the ship is in a foreign port is contrary to the relevant provision of the Convention. The Committee notes the information supplied by the Government in its latest report and the clauses of collective agreements (CC-35/88, CC-713/87) which the Government deems applicable to this Article of the Convention. Nevertheless, the Committee notes that these clauses are not related to the application of *Article 9, paragraph 1*, and refer to the right recognized by the Conventions for the employer to dismiss crews which renounce their trade union membership and the termination of the agreement entered into for a voyage. The Committee expresses once again its hope that the Government will take the necessary measures to amend its legislation to bring it into line with this provision of the Convention.

[The Government is requested to supply a detailed report in 1998.]

Pakistan (ratification: 1932)

Referring to its previous comments concerning the application of *Articles 1, 5(2) and 14(2) of the Convention*, the discussion in the Conference Committee in 1992, the comments by the All Pakistan Federation of Trade Unions (APFTU) and the Pakistan National Federation of Trade Unions (PNFTU) of 1993, the Committee notes the information provided by the Government in its report for the period ending June 1996, received in the ILO on 3 December 1996. The Committee recalls that the Government indicated in 1992 that the Committee's observations would be dealt with in a newly drafted Merchant Shipping Bill, to be submitted to the National Assembly.

The Committee notes the Government's indication in its report that the draft Merchant Shipping Bill 1995 incorporating the corrections, amendments, reconsiderations, additions to the Merchant Shipping Act, 1923, was being translated into Urdu which would take two to three months prior to submission to the National Assembly. It also notes the Government's statement that the Act and subsequent rules would take into account the provisions of *Articles 1 and 5 of the Convention*.

The Committee recalls that under *Article 1*, the Convention applies to all seagoing vessels registered in Pakistan and thus also covers engagements taking place outside the country. The Committee noted in 1994 that the draft new section 155 of the Bill, as transmitted by the Government in 1992, would appear to satisfy this requirement.

Under *Article 5 of the Convention*, the document containing the record of the seaman's employment on board the vessel must not include any statement as to the quality of the seaman's work. The Committee noted in 1994 that the draft new section 161 of the Bill, transmitted in 1992, would seem to implement this Article of the Convention. The Committee also recalls that under *Article 14(2) of the Convention* the seaman shall at all times have the right, in addition to the record mentioned in *Article 5*, to obtain from the master a *separate certificate* stating the quality of his work or, failing that, a certificate indicating whether he has fully discharged his obligations under the agreement. The draft Bill should clearly mark the difference between the document referred to in *Article 5* and the certificate referred to in *Article 14(2)*.

The Committee notes that the Government reiterates its statement that, under the proposed Merchant Shipping Bill, masters would be obliged to observe the law without any distinction in relation to the port of employment; and that the provision authorizing masters to make observations on the quality of the seaman's work would be deleted.

Noting that the Government has been referring for many years to modifications in the legislation, the Committee hopes that the Government will soon submit the necessary amendments to the National Assembly in order to bring legislation into conformity with *Articles 1, 5 and 14(2) of the Convention* and that it will report on progress achieved.

Venezuela (ratification: 1944)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information supplied by the Government in its reports. It notes in particular that the Regulations on Navigation at Sea and on Inland Waterways is currently being revised in order to bring it into line with the Convention. It trusts that the Government will take the following comments, which have already been addressed to it, into consideration when it takes the necessary measures to harmonize it legislation with the provisions of the Convention.
>
> *Article 8 of the Convention.* The Committee draws the Government's attention to the need to ensure that seafarers can obtain clear information on board as to their conditions of employment so that they may satisfy themselves as to the nature and extent of their rights and obligations. The Committee hopes that the relevant legislation will be amended so as to establish the necessary measures to give effect to this provision of the Convention.
>
> *Article 9, paragraph 1.* The Committee notes that a seafarer may not be dismissed while the vessel is at sea or in a foreign country unless he has been recruited in the country in question (section 353 of the Labour Act of 1990), which provides seafarers with better protection than that established in the Convention. The Committee refers to the provision of section 98 of the above Act, which provides for resignation as a form of termination of the employment relationship, and points out that under Regulation 5 of the 1992 Regulations on Labour On Board Vessels Sailing at Sea and On Inland Waterways, the agreement may not be terminated when the vessel is in foreign waters or uninhabited places. This could have the effect, in the event of a long voyage without any return to a Venezuelan port, of severely restricting the seafarer's right to terminate the agreement. The Committee therefore hopes that this provision will be amended so that seafarers may terminate agreements for an indefinite period in any port where the vessel loads or unloads, provided that the prescribed notice period is observed, even when the boat is in foreign ports.
>
> *Article 13, paragraph 1.* The Committee notes the Government's reply to its previous comments on this point and, in particular, the reference to sections 100 and 107 of the Labour Act, which deal with resignation and the notice requirements for voluntary resignation terminating an appointment of indefinite duration without proper cause. The Committee notes, however, that contrary to the Convention, the possibility of the seafarer's obtaining command of a vessel or an appointment as mate or engineer or to any other post of a higher grade than he actually holds, or the fact that other circumstances have arisen since his engagement which render it essential to his interests that he should be permitted to take his discharge, are not expressly provided for in legislation as proper reasons for resignation. Neither are they among the reasons listed in the above Act (section 103). It also notes that a seafarer who, without proper reason, terminates a fixed-term appointment before its expiry, must pay his employer compensation for damage and injury (section 110). The Committee therefore reiterates that the above-mentioned legislation should be amended in order to bring it into line with this provision of the Convention.
>
> *Article 14, paragraph 2.* The Committee notes section 111 of the Labour Act, referred to by the Government in its report. It notes that not only does this provision not provide for the possibility for a seafarer to obtain from the master, at all times, a separate certificate as to the quality of his work or, failing that, a certificate indicating whether he has fully discharged his obligations under the agreement, but it also forbids any entry in the certificate other than the ones required (duration of employment relationship, last salary paid and duties).

The Committee cannot but reiterate the hope that this legislation will be amended to bring it into line with this provision of the Convention.

Furthermore, the Committee notes section 335 of the Labour Act which provides that articles of agreement shall be signed where there is no collective agreement. The Committee points out that States ratifying the Convention are under the obligation to take the necessary steps to ensure that the work of seafarers is governed by articles of agreement signed by the shipowner or his representative *(Article 3 of the Convention)*, even if there is a collective agreement in this area. In this connection, the Committee recalls that the particulars referred to in *Article 6, paragraph 3*, most of which are provided for in section 2 of the above-mentioned Regulations, must appear in the articles of agreement and cannot, by reason of their nature, be provided for in collective agreements.

Point V of the report form. Please give a general appreciation of the manner in which the Convention is applied, providing a specimen of the seafarer's discharge book currently in force, together with statistical information on the number of seafarers signed on and the number of articles of agreement signed.

The Committee also wishes to point out that the Government may request technical assistance from the Office in amending the national legislation in order to harmonize it with the provisions of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Colombia, Mexico, Portugal.*

Convention No. 23: Repatriation of Seamen, 1926

A request regarding certain points is being addressed directly to *Djibouti*.

Convention No. 24: Sickness Insurance (Industry), 1927

Peru (ratification: 1945)

The Committee notes the Government's report received in September 1997. It also notes the adoption of new legislative texts: Act No. 26842 relating to general health; Act No. 26790 relating to the modernization of social security in the health field; and Supreme Decree No. 009-97-SA to regulate the Act relating to the modernization of social security in the health field. The new legislation establishes a social security system for health purposes — under the Peruvian Institute of Social Security (IPSS) — and provides for the participation of health service companies. In its report, in addition to other general remarks, the Government states that the health services provided by the social security system are supplemented by the plans and programmes of the health service companies, which are enterprises or public or private institutions distinct from the IPSS, whose only purpose is to provide a health care service with its own infrastructure or with that of a third party under the supervision of a Health Service Company Inspectorate. According to the Government, the aim sought is not to privatize the social security system but only to enable the private sector to enter into this field. Taking into account the important changes made by the new legislation, the Committee requests the Government to provide a detailed report containing information on the legislation and practice, including statistics, as requested in the report form for each of the provisions of the Convention.

[The Government is invited to report in detail in 1998.]

Spain (ratification: 1932)

1. With reference to its previous comments and to the observations of the General Union of Workers (UGT), the Committee notes with satisfaction the adoption of Royal Legislative Decree No. 8/1997 on emergency measures for the promotion of employment, amending the 1995 Act on the status of workers, and particularly the provisions of section 11 concerning training contracts. Under section 11(2)(i), social protection of holders of a training contract aged between 16 and 21 years covers, inter alia, health care and benefits in kind for temporary incapacity in the event of sickness or accident of non-occupational origin, in accordance with *Article 2, paragraph 1, of the Convention*.

2. The Committee also notes the adoption of Act No. 42/1994 merging benefits for temporary incapacity to work and temporary invalidity in one single benefit for temporary incapacity.

3. Finally, the Committee refers to the comments it makes in its observation on Convention No. 102 in regard to measures taken to ensure in practice that the employer pays sickness compensation between the fourth and fifteenth days of incapacity.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Nicaragua, Spain*.

Convention No. 25: Sickness Insurance (Agriculture), 1927

Peru (ratification: 1945)

See under Convention No. 24.

[The Government is requested to report in detail in 1998.]

* * *

In addition, a request regarding certain points is being addressed directly to *Nicaragua*.

Convention No. 26: Minimum Wage-Fixing Machinery, 1928

Chad (ratification: 1960)

The Committee notes the information supplied in the Government's report in reply to its previous comments, as well as the observations made by the Trade Unions' Confederation of Chad (CST). It also notes the discussion held at the Conference Committee in 1993 and the conclusions and recommendations of the Committee on Freedom of Association at its 305th Session (November 1996; Case No. 1857) approved by the ILO Governing Body, as well as the follow-up to the matter (see 306th Session (March 1997) and 307th Session (June 1997)).

The Committee also notes the Government's reply to the CST's observations which was received late.

Article 3 of the Convention. In its previous comments, the Committee noted the Government's statement that the proposed increase of minimum wages fixed in 1978 has been shelved as part of the structural adjustment programme imposed by the IMF and the World Bank. The Committee referred to paragraphs 428 and 429 of the 1992 General Survey on minimum wages which state that one of the fundamental objects of the instruments in question is to ensure to workers a minimum wage that will provide a satisfactory standard of living for them and their families, and that this fundamental objective should constantly be borne in mind, especially in certain countries where structural adjustment programmes are being applied. The Committee requested the Government to indicate any developments in this respect and to provide information on the participation of the employers and workers concerned by decisions relating to the fixing of minimum wage rates, including decisions to freeze minimum wages.

The Committee notes that the minimum interoccupational guaranteed wage rates (SMIG) and the guaranteed minimum agricultural wage rates (SMAG) of 1978 were adjusted on 1 January 1995 and on 1 January 1996, along with the relevant wage scales. It notes that since the entry into force of the new Labour Code, minimum wage rates are fixed by joint agreement of the employers' and workers' representative occupational organizations (see section 249 of Act No. 38/PR/96 of 11 December 1996 issuing the Labour Code). The Government stipulates that these rates are determined by a joint committee composed of employers and workers.

Nevertheless, the CST considers that it was excluded by the Government from all joint collective negotiations relating to fixing of minimum wages.

In reply to these observations, the Government considers that this exclusion is owing simply to the fact that the negotiations had begun before the CST was founded and that, accordingly, only when the term of office of the Higher Committee for Labour and Social Security had expired could it be reconstituted to include the CST; there was therefore no question of discriminating against the CST in this matter.

The Committee recalls that in its recommendations when considering the complaint of the CST against the Government of Chad in a communication of 30 September 1995, the Committee on Freedom of Association requested the Government, in regard to participation of the CST on joint or tripartite bodies, if there was any doubt as to the representativity of the CST, to undertake an objective and impartial determination of representativity and to take the appropriate measures in the event that it turned out to be the representative union. Taking into account the information supplied by the CST in a communication of 19 December 1996, the same Committee noted with interest that the situation had improved, while requesting the Government to keep it informed on the matter.

The Committee hopes that the Government will shortly be in a position to supply detailed information on the designation of members of the joint committee responsible for fixing minimum wages, and also on the issue of CST participation in joint committee activities.

Article 4, paragraph 1, and Article 5, read in conjunction with point V of the report form. The Committee notes the Government's statement that the country's economic difficulties prevent it from providing labour inspection services with the resources to fulfil their function of monitoring the application of laws, regulations and collective agreements concerning workers; it is desperately short of such resources. In addition, according to the CST, the salary scales following rises in the rates of the SMIG and SMAG which were rendered effective by Decree No. 313bis/PR/95 of 7 April 1995, approving and issuing the new salary scales of 7 April 1995, are not applied or executed by public, parapublic and private employers, but there is no Government reaction to this.

In reply to these observations, the Government considers that, first, the new scales are applied in the private sector, even though some minor problems exist here and there. Moreover, the Government constantly reminds employers of their obligations in this regard, as well as of the need to make offending employers aware of the application of the new scales. Furthermore, in the public sector, because of the financial difficulties of the country and the undertakings made to the financial backers for controlling the amount spent on salaried employment until 1998, it is only after this date that workers on the whole will experience improved living conditions.

The Committee recalls that the provisions of the Convention make it incumbent on States to take the necessary steps to establish a system of supervision and sanctions to ensure that minimum rates of wages are paid. It requests the Government to indicate the measures taken or contemplated in regard to employers in the private sector who violate the regulation on minimum wages.

Furthermore, the Committee refers once again to its preceding comments in which it recalled the indications given in paragraphs 428 and 429 of its 1992 General Survey on minimum wages that one of the fundamental objectives of the instruments in question is to ensure to workers a minimum wage that will provide a satisfactory standard of living for them and their families, and that this fundamental objective should constantly be borne in mind, especially in countries where structural adjustment programmes are being applied. It hopes that this objective will be taken into account when the next new wage scales in the agricultural and non-agricultural sectors are fixed, with the participation of the employers and workers concerned.

[The Government is asked to report in detail in 1998.]

Colombia (ratification: 1933)

The Committee notes the information provided in the Government's report.

Application of the Convention in the agriculture and food sector

The National Union of Food Industry Workers (SINALTRAINAL) has provided an observation concerning the refusal by certain enterprises in the agriculture and food sector to apply the 19.5 per cent adjustment of the minimum wage for all Colombian workers decided upon by the Government as from 1 January 1996. Noting the absence of a response from the Government, the Committee requested it to indicate the measures taken or envisaged to ensure that the minimum wage rates fixed are binding, in accordance with *Article 3, paragraph 2, of the Convention*, and are effectively applied, in accordance with *Article 4*.

The Committee notes the very detailed information provided by the Government on the procedure initiated by SINALTRAINAL. In this regard, the Government considers that the Minister of Labour and Social Security has observed all existing positive law procedures.

The Committee observes, however, that the Government's report does not contain any information on the outcome of the procedure. Consequently, it requests the Government to provide information on the results of the procedures in respect of the application of the increases in minimum wages in the agriculture and food sector.

Application of the Convention to teachers

In the previous comments relating to the wage rules for teachers in the public sector, the Committee requests the Government to provide copies of the texts in force concerning the minimum wage rates applicable, in accordance with the statutory minimum wage for the national territory, to indicate whether these rates apply to all regions, including the Department of Santander which was expressly referred to in the observations made previously by the General Confederation of Workers (CGT), and finally to indicate the measures taken or envisaged to ensure the application at local level of the minimum wage rates in question.

The Committee notes that the Government has provided information on the decentralization and financing of the education system but does not provide an initial response to the points raised by the Committee. Consequently, the Committee again requests the Government to provide copies of the texts in force concerning the minimum wage rates applicable to teachers, to indicate whether these rates apply to all regions, including the Department of Santander which was expressly referred to in the observations made previously by the General Confederation of Workers (CGT), and finally to indicate the measures taken or envisaged to ensure the application at local level of the minimum wage rates in question.

Furthermore, the Committee notes the statement by the Government that section 197 of Act No. 115 of 8 February 1984 provides that the minimum wage for teachers in the private sector should not be below 80 per cent of that which is applicable to the corresponding category in the public sector. The Constitutional Court in case No. C-252/95 of 7 July 1995 dismissed the application of this provision; accordingly the ratio of teachers' wages in the private sector to the wages of the corresponding category in the public sector must now be one to one.

The Committee requests the Government to indicate the measures taken or envisaged to amend section 197 of Act No. 115 of 8 February 1984 and, where necessary, to provide a copy of the new text.

India (ratification: 1955)

The Committee notes the observations made by the Mahabubnagar District Contract Labour Union and the Centre of Indian Trade Unions (CITU) concerning, inter alia, various infringements of the minimum wage regulations in the country. It also notes the Government's reply to the Mahabubnagar District Contract Labour Union's observations. However, the Committee notes that, although the observations made by the CITU were supplied with the Government's report, the report does not contain the Government's comments on the specific issues raised in these observations.

The Committee recalls the Government's statement, made in 1993, that various proposals to amend the Minimum Wages Act, 1948, were under active consideration. According to the Government, these proposals are at advanced stage of consideration, and consultations with central ministries and state governments have been completed. It hopes that the Government will be in a position to make the necessary amendments in the near future.

The binding force of minimum wages

In its previous comments, the Committee noted the observation made by the Bijli Mazdoor Panchayat concerning the situation of 4,000 scheduled tribe workers, the majority being women, and all belonging to the low caste called "Adivasis", forced to work in inhuman conditions in the "Ash Area" by the Gujarat Electricity Board, a statutory board of the State Government of Gujarat, notwithstanding the fact that the "Ash Area" is attached to the thermal power station and is a factory under the Factory Act. Thus, the Bijli Mazdoor Panchayat indicated that a petition before the High Court of Gujarat has been filed for implementation of different labour laws in the State of Gujarat, including the Minimum Wages Act.

The Committee noted the Government's statement that the Commissioner of Labour is making a proposal to include in the scheduled employment the activity of the workers who are working outside the thermal power station premises (the "Ash Area") to separate burnt coal from the flowing water. It hoped that this action would be undertaken in the near future and requested the Government to supply information on any development in this respect. The Committee also requested information on the outcome of the petition before the High Court of Gujarat.

From the report, the Committee notes that the Government of Gujarat is taking necessary steps to resolve the issue covered by the complaint of the Bijli Mazdoor Panchayat and that the developments made in the matter are awaited. Furthermore, the Government indicates the information on the outcome of the petition before the High Court of Gujarat is also awaited.

The Committee hopes that the Government will, in the near future, be in a position to provide information on any progress achieved with respect to the Bijli Mazdoor Panchayat's complaint. It asks the Government to indicate any measures taken by the Labour Commissioner to include in the scheduled employment the activity of the workers who are working outside the Thermal Power Station premises (the "Ash Area") to separate burnt coal from the flowing water.

Application of minimum rates of wages to part-time workers

In its previous comments, the Committee noted that, according to the Tamil Nadu All India Trade Union Congress (AITUC), the Village Panchayat conservancy workers (sweepers and scavengers) and the pump operators in most districts are still not paid the notified monthly minimum wages of Tamil Nadu. In reply to the Tamil Nadu AITUC's comments, the Government stressed, inter alia, that the workers engaged in any local authority are being paid at minimum wage rates wherever they are engaged in full-time work.

The Committee recalled that, under *Article 3, paragraph 2(2), of the Convention*, minimum rates of wages which have been fixed should be binding on the employers and workers concerned and, accordingly, unskilled part-time workers should not be excluded from the application of the minimum wage rates of unskilled workers only because they are working part time; in other words, the minimum rate should be applied in determining the amount of wages calculated pro rata on the hours worked.

In its report, the Government states that there have been lots of claim applications filed under section 20(2) of the Minimum Wages Act, 1948, for non-payment of minimum wages for the workers employed in local authorities like sweepers, scavengers and pump operators. Since most of the categories of workers are engaged on a part-time basis, the wages already fixed for full-time workers cannot be given to the part-time workers. In order to regulate the above situation, the State Government of Tamil Nadu decided in the State Minimum Wages Advisory Board meeting held on 9 August 1996 to collect the particulars regarding the total number of workers with their categories and wages in the Village Panchayat and town Panchayats. After ascertaining the above fact, the details will be placed before the State Minimum Wages Advisory Board for taking suitable action for revision of minimum wages for workers employed in the local authorities. Further developments made in the matter are awaited from the Government of Tamil Nadu. In addition, the Government indicates that a copy of the above documents requested by the Committee will be obtained from the Government of Tamil Nadu.

The Committee notes the Government's statement and hopes that the Government will be, in the near future, in a position to provide: (i) information on any progress achieved with respect to actions taken by the State Minimum Wages Advisory Board as concerns the revision of minimum wages for workers employed in local authorities, including part-time workers, and; (ii) a copy of text on minimum wages, as referred to in the Tamil Nadu AITUC's communication (Government of Tamil Nadu, GO No. 449 dated 6 June 1997 and RDLA, letter No. 106883/M11/77).

Application of minimum wages to the unorganized sector and home-based units

The Committee notes the observations made by the CITU concerning, inter alia, the lack of any wage policy as regards the vast multitude of the workers in the unorganized sector. According to the CITU, despite repeated demands, the Government has not fixed any criterion to determine the minimum wages, which therefore vary indefinitely from state to state. As a result of the implementation of the Structural Adjustment Programme (SAP), goods which used to be produced in the organized sector are now being produced in the unorganized sector, and the home-based units are growing constantly. A large number of skilled workers are employed in the unorganized sector where the minimum wages are below the poverty line and the workers do not have the bargaining power to protect themselves from exploitation by employers. Furthermore, the CITU explains that, according to the Government, the concept of floor level minimum wage is that below which there should not be any minimum wage and floor level minimum wages should not be below the poverty line. However, the CITU points out that, despite the Government's announcement, floor level minimum wages are below the poverty line. According to the CITU, the wages of workers in the unorganized sector should be above the poverty line.

The Committee notes the Government's indication that the Minimum Wages Act is primarily concerned with the employment in the unorganized sector. It is generally accepted that around 92 per cent of the total number of workers (285,932 thousand) are employed in the unorganized sector. In view of this, the Minimum Wages Act covers at least 263,057 thousand workers in India.

The Committee requests the Government to provide full information on the practical measures taken or contemplated to ensure the payment of minimum wages to wage-earners working in the unorganized sector and the homeworkers.

Other points

In its previous comments, the Committee noted the observations made by the Mahabubnagar District Contract Labour Union and the Federation of Unorganized Migrant Labour of Goa (FUMLOG) concerning non-payment of minimum wages to the migrant labourers of the Mahabubnagar District, called "Palamoori labourers".

In its report, the Government states that the complaint of the Mahabubnagar District Contract Labour Union concerning non-payment of minimum wages to the migrant labourers of Mahabubnagar District has been taken up with the Government of Goa. The State Government reported that wide publicity is given to the minimum wages fixed besides publishing the same in the *Official Gazette*. Labour inspectors are appointed under the Minimum Wages Act, 1948, for enforcement of the minimum wages so fixed. If irregularities of under-payment are detected, claim applications are filed before the authority appointed under section 20 of the above Act either by the inspector or the worker concerned. The difference, if not paid, is recoverable as arrears of land revenue.

The Committee takes due note of these general indications. It asks the Government to indicate measures taken by the central or the state governments to ensure better application of the law on minimum wages in the entire territory, with particular reference to "Palamoori labourers", and to migrant workers in Goa and homeworkers as mentioned in the Committee's previous comment. It requests the Government to continue to supply information, in accordance with *point V of the report form*, on the effect given in practice to the Convention: (i) by supplying the available statistical data on the number and various categories of workers covered by the minimum wage regulations, and; (ii) by indicating, for example, the results of the inspections carried out, the violations reported and the sanctions imposed.

A direct request is also being addressed to the Government on other matters, including the observations previously made by the United Trade Union Centre (UTUC) and the All India Organization of Employers (AIOE).

Morocco (ratification: 1958)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> The Committee noted the information supplied by the Government in 1992 and the discussion that took place on the matter in question at the Conference Committee during the same year.
>
> *Article 3, paragraph 2(1) and (2), of the Convention.* In reply to the comments made by the Democratic Confederation of Labour and the General Union of Moroccan Workers to the effect that the Government fixes minimum wages for the different sectors unilaterally and without consulting workers' organizations, and that the Central Committee on Wages and Prices, established under the Dahir of 31 October 1959, is no longer in operation, the Government indicates in its reports that it never fails to consult employers' and workers' organizations concerning the fixing of minimum wages, in particular through tripartite committees set up as part of the dialogue between the Government and the social partners, and that the employers' organizations and the trade unions, including the two complainant organizations, were consulted before the most recent minimum wage adjustments in 1991 and 1992. The Committee notes this information and asks the Government to specify the composition and operation of these tripartite committees and to provide the provisions of the law under which they were established together with detailed information on the way they operate in practice.
>
> *Article 4, paragraph 1.* With regard to violations of minimum wage provisions, which were also referred to in the above-mentioned comments, the Government states that, in 1992, the labour inspectorate recorded 1,158 violations of the legal provisions on wages. The Committee notes this information and asks the Government to give more detailed information on the operation of the inspection service, including, for example, the number of violations of minimum wage provisions recorded, the records drawn up by inspectors and the sanctions applied.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

New Zealand (ratification: 1938)

The Committee notes the detailed information supplied in the Government's report in reply to its previous comments. It also notes the comments made by the New Zealand

Council of Trade Unions (NZCTU) concerning the application of this Convention and Convention No. 99, as well as the Government's response to these observations.

The participation of the employers and workers concerned in the operation of the minimum wage fixing machinery

1. The Committee notes that section 4 of the Minimum Wage Act, 1983, provides that the Governor-General may from time to time prescribe the minimum rates of wages payable to workers, or class(es) of workers as defined by age. Section 5 of the same Act provides that the Minister of Labour should annually review the minimum wage. However, according to the Government, it is now established in New Zealand for the Minister of Labour to write to the New Zealand Council of Trade Unions as a central representative for employees, and the New Zealand Employers' Federation as a central representative for employers, advising them that the review is taking place and seeking submissions from them. The Minister considers their submissions and onus from other organizations as part of the review before making his or her recommendations.

2. According to the NZCTU, the principle underlying the Minimum Wage Fixing Machinery Conventions is that such machinery should be implemented and operated through consultation between the government and employers' and workers' organizations. The Union considers that the Government's policy and practice is in breach of this principle for the following reasons: (i) the Minimum Wage Act was passed in 1983 without a formal tripartite consultation process between the government, employers and unions; (ii) although the Minimum Wage Act requires the Minister of Labour to review the minimum wage each year, it does not specify the purpose of that review or set a criteria against which the minimum level is to be assessed. The review is generally conducted in an arbitrary manner. Neither the Act nor any ministerial statement has a definition of the purpose of the minimum wage or criteria against which the review is to be conducted. In addition, there is no consultation process with employers and unions apart from a written submission process. Unions have no special role or function in the Minister's decision-making process.

3. In reply to the NZCTU's comments, the Government states that *Article 2 of the Convention* states that each Member shall be free to decide, "after consultation with the organizations, if any, of workers and employers" in the trades concerned, in which trades the minimum wage fixing machinery should be applied. The Minimum Wage Act, 1983, was introduced following the normal legislative process in New Zealand. A key component of that process is the role of the parliamentary select committee, which receives submissions on proposed legislation from individuals and organizations. The NZCTU, along with employers and all other interested parties, would have had the opportunity to comment on the proposed legislation as part of the process. With regard to the minimum wage consultation process, the Government states that it gives full and careful consideration to a wide range of factors in the review process, including the submissions which it has in the past customarily sought from the NZCTU and the New Zealand Employers' Federation, as well as any other submissions it may have received. The decision-making process is also subject to judicial review by the courts.

4. As concerns the purpose or criteria of assessment of the level of the minimum wage, the Government states that the Minimum Wage Act does not specify the criteria for the annual minimum wage review and the level at which the minimum wage is set. A thorough consideration is given by the Government to all relevant factors in the review process. Criteria for previous reviews have included: (i) the role of the minimum wage as part of the minimum code of employment; (ii) the relationship between minimum wage

rates and the levels of employment and unemployment; (iii) on-the-job training; (iv) incentives for enrolment in education and training programmes; and (v) the economy in general.

5. The Committee recalls that one of the essential obligations of the minimum wage instruments is that the minimum wage fixing machinery must be set up and operated in consultation with organizations of employers and workers, who must participate on an equal footing. As specified in paragraph 190 of its 1992 General Survey on minimum wages, this obligation to consult the organizations of employers and workers concerned should be carried out at different times. Initially, it should be done at the time of determining the scope of the minimum wage to be established. Second, it should be applied during the operation of the minimum wage fixing machinery. Furthermore, in paragraphs 42 and 44 of its 1982 General Survey of the reports relating to Convention No. 144 and Recommendation No. 152 on tripartite consultation, the Committee considered the meaning of the term "consultation". It stated that "consultation" has a different connotation from mere "information" and from "co-determination". It also pointed out that the views expressed in the course of consultations were not a form of participation in decision-making , but simply one stage in the process of reaching a decision. It went on to say that "consultation must be able to have some influence on the decision". In addition, paragraph 195 of the 1992 General Survey on minimum wages specifies that the consultation referred to in the minimum wage instruments implies that employers and workers, their representatives or those of their organizations be able to have a real influence on the decisions to be taken.

6. In consideration of the above, the Committee requests the Government: (i) to provide information as to the consultation process followed in accordance with *Article 3, paragraph 2(1), of the Convention*; (ii) to specify to what extent employers and workers concerned are associated in equal numbers and equal terms in the operation of the minimum wage fixing machinery, in accordance with *Article 3, paragraph (2)*; and (iii) to indicate the results of consultations of employers and workers concerned in the determination of minimum wages.

The minimum wage for young workers

7. The Committee notes that section 4 of the Minimum Wage Act 1983 provides that the Governor-General may from time to time prescribe the minimum rates of wages payable, inter alia, to class(es) of workers as defined by age. For instance, the Minimum Wage Order 1997 , which is currently in force, provides for different minimum rates for workers aged 16 to 19 years and for workers aged 20 years and upwards. In each class of workers, as defined by age, three categories of rates are provided according to the following cases: (a) if the worker is paid by the hour or piecework [for workers aged 16 to 19: NZ$4.20 or an equivalent amount having regard to the rate of production of the worker (in lieu of NZ$7, if the workers are aged 20 and upwards)]; (b) if the worker is paid by the day [for workers aged 16 to 19: NZ$33.60 for each day plus NZ$4.20 for each hour in excess of eight worked by the worker on each day (in lieu of NZ$56 and NZ$7, respectively, if the workers are aged 20 and upwards)]; (c) in all other cases [for workers aged 16 to 19: NZ$168 for each week plus NZ$4.20 for each hour in excess of 40 worked by the worker in each week (in lieu of NZ$280 and NZ$7, respectively, if the workers are aged 20 and upwards)].

8. The Government states that a minimum wage for employees aged 16-19 came into effect on 31 March 1994, following its decision to introduce a youth minimum wage. The youth minimum wage was set at a level that was 60 per cent of the adult rate.

9. The Committee refers to paragraphs 169 to 181 of its 1992 General Survey on minimum wages. Although minimum wage instruments contain no provisions providing for the fixing of different minimum wage rates on the basis of criteria such as sex, age or disability, the general principles laid down in other instruments have to be observed, and particularly those contained in the Preamble of the Constitution of the ILO which specifically refers to the application of the principle of "equal remuneration for work of equal value". As regards age, paragraph 171 of the above Survey specifies that the quantity and quality of work carried out should be the decisive factor in determining the wage paid. Therefore, the Committee considers that, although the minimum wage Conventions do not forbid the determination of lower minimum wage rates for young workers, the measures in this respect should be taken in good faith and should incorporate the principle of equal remuneration for work of equal value; the reasons that prompted the adoption of lower minimum wage rates for groups of workers on account of their age and disabilities should be regularly re-examined in the light of this principle.

10. The Committee requests the Government to provide information on the grounds for fixing the youth minimum wage at a level that is 60 per cent of the adult minimum wage.

The general application of the Minimum Wage Act

11. The Committee notes the Government's statement that the Department of Labour's inspectorate has the statutory power to enforce the Minimum Wage Act by initiating proceedings for recovery of wages on behalf of a worker. If necessary, a labour inspector will take a claim free of charge to the employment tribunal and may also seek an order for penalties against the employer. The great majority of labour inspectorate investigations, however, are resolved without recourse to tribunal proceedings. Workers (or their representatives) are also themselves able to bring claims against any employer who breaches the Minimum Wage Act. Employees in New Zealand, therefore, have a choice between initiating proceedings themselves or asking the labour inspectorate to pursue a claim on their behalf. The employment tribunal considers claims of breaches of the Minimum Wage Act brought by either the labour inspector or workers. Appeals of tribunal decisions are heard by the employment court. Under the Limitation Act, 1950, proceedings must be brought within six years of the breach of the Minimum Wage Act.

12. With respect to information on minimum wage, there are, according to the Government, a number of sources available for both employers and workers as to minimum wage rates. When a new minimum wage order is issued, it is published in the *Gazette*, an official publication which provides information about regulations that are to come into effect. The new rates are also publicized through press releases and direct mailing to employees' organizations, employers' organizations and interested community groups. The Department of Labour's industrial relations service provides information on the minimum wage and other statutory conditions of employment in a range of pamphlets which are widely available through the department, citizens advice bureaux and other interested organizations. The service operates a toll-free telephone information line which provides employees and employers with information on all industrial relations matters, including minimum wage rates. Labour inspectors also perform a general education role, providing information and speaking to interested organizations and individual employees and employers about their employment rights and obligations.

13. The Government also provides figures on the number of inquiries and alleged breaches submitted to the labour inspectorate over the reporting period (July 1992 to March 1997), as well as the number of minimum wage actions brought before the

employment tribunal over the same period. According to the Government, the increase in the number of inquiries submitted to the labour inspectorate over the reporting period (from 4,932 between July 1992 and June 1993 to 7,550 between July 1996 and March 1997) is largely due to the introduction of information and education initiatives by the labour inspectorate, in particular the national toll-free telephone information line.

14. However, according to the NZCTU, the Government has adopted a "hands off" policy in the enforcement of the minimum wage, thereby placing the onus on the individual. The labour inspectorate does not inspect wage and time records on its own volition and will not respond to anonymous complaints by employees, rarely seeks recoveries of underpayments when they have been detected and does not prosecute offending employers with a view to having criminal penalties imposed on them. This means that there is a risk that violations go unreported and undetected, with complainants fearing retribution if they are identified. Often complaints are only made in extreme circumstances, or when an employee is about to leave his/her job. This defeats the purpose of statutory protection. Given that the labour inspectorate only seeks recovery of sums due, breaches of the law are, in effect, crimes without punishment which confer a net gain to employers. The NZCTU refers to the figures given in the Government's report that from June 1996 to March 1997, there were only two penal sanctions and one recovery action for minimum wages before the employment tribunal. The union expresses its concern that this is a reflection of both the inadequacy of a non-proactive inspectorate mechanism and a lack of knowledge in the workplace about minimum rights.

15. In reply to the NZCTU's comments, the Government notes that when a breach of the minimum wage has occurred, the labour inspectorate's key priority is to ensure that the breach is rectified, the law is complied with and the employees receive what they are owed as soon as possible. This is generally accomplished without the need for formal legal action in the employment tribunal or employment court. However, when such action is required, penalties are sought in all cases where the breach is considered serious enough to warrant this action.

The enforcement of the Minimum Wage Act in the agriculture sector

16. As concerns the application of minimum wage in the agriculture sector, the NZCTU notes that the scope of the Minimum Wage Act is general, and hence the Government has tended to supply the same responses to the provisions of this Convention and Convention No. 99. The NZCTU considers that, while its comments regarding inadequate inspection and enforcement machinery apply in both sectors, there are additional, special problems in agriculture, which are not adequately reflected in the Government's report on Convention No. 99. According to the NZCTU, this is a by-product of the economic reform that has taken place, resulting in a significant increase in informal sectors. The Government's own studies indicated that breaches of the minimum wage are common in agriculture (cf. *Situation and outlook of NZ agriculture, 1993*). Workers respond to low pay by looking for a better job, rather than seeking enforcement. The small scale in New Zealand farming means that typically there is a one-to-one working relationship between the worker and the employer, and it is almost impossible for a worker to complain and maintain a working relationship. This means that extra efforts into publicizing the level of the minimum wage along with routine inspection should be part of the enforcement mechanism. Moreover, it is only in agriculture that deductions can be made from the minimum wage as payments for board and lodgings. This makes it easier to avoid paying the nominal minimum wage, and greater efforts need to be made

to assess whether board and lodgings are as valuable as is claimed when minimum wages are reduced accordingly. Finally, the NZCTU believes that there is a routine and widespread avoidance of the minimum wage in horticulture, where workers are employed on a piece-rate basis, especially on short-term seasonal contracts to pick fruit and vegetables. The piece rate is a sham designed to avoid the minimum wage, and actual earnings are often below the minimum wage. Much stronger action is needed to stamp out wholesale breaches of the law.

17. In reply to the NZCTU's comments, the Government states that it takes a proactive approach to educating and providing employees and employers in all sectors with information about employment rights and obligations. One of the reasons behind the introduction of the national toll-free telephone information service was to improve access to information for rural employees and other employers who found it difficult to contact the labour inspectorate offices. While some proactive enforcement is also carried out in order to achieve more widespread compliance with relevant employment obligations, the Government believes that ensuring widespread employee and employer knowledge of the minimum wage is the most effective way to ensure compliance. As regards payroll deductions, the Minimum Wage Act provides that certain specified and limited deductions can be made in any case where an employee is provided board or lodging by his or her employer.

18. With respect to the application of the minimum wage to workers employed on a piece-rate basis in horticulture, the Government points out, however, that the Minimum Wage Act is applicable regardless of the method of payment. The statutory minimum rate must be paid whether workers are paid by the hour worked, or by the amount that they produce. If any employee believes that he or she has been paid less than the minimum wage, a complaint can be made to the labour inspectorate.

Conclusions

19. As regards the above, the Committee recalls that *Article 4, paragraph 1, of this Convention*, as well as *Article 4, paragraph 1, of Convention No. 99*, provides that necessary measures should be taken in order to ensure that wages are not paid at less than the minimum wage rates that have been fixed, including the application of sanctions in cases of infringement of the minimum wages, with a view to guaranteeing workers the payment of such rates. Compared to the number of violations of the minimum wage legislation, the number of penal sanctions (for instance, two penal sanctions out of a total of 88 alleged breaches of minimum wage legislation between July 1996 and March 1997) appears too low and not dissuasive enough to prevent such violations and to ensure the respect of minimum wage provisions. Furthermore, with reference to its comments under the Labour Inspection Convention, 1947 (No. 81) and to the 1996 Conference Committee's conclusions on the application of Convention No. 81, the Committee considers that the number of staff of the General Labour Inspectorate (19 inspectors) is too low for the number of work-sites involved. The Committee requests the Government, in accordance with *Article 5 and point V of the report form*: (i) to supply the available statistical data on the numbers and categories of workers covered by the minimum wage regulations; and (ii) to continue to indicate the results of inspections carried out (including in the agriculture sector), as well as the number of violations reported and the sanctions imposed.

Paraguay (ratification: 1964)

The Committee notes the report submitted by the Government.

Article 3, paragraph 2(2) and (3), of the Convention (in conjunction with *point V of the report form*). In its previous comments, as regards implementation of the recommendations adopted by the Governing Body subsequent to the complaint submitted by the Latin American Central of Workers (CLAT), the Committee requested the Government to indicate the measures taken or envisaged to ensure the application of the national legislation so as to guarantee: (i) the participation of representatives of workers and employers in minimum wage fixing machinery, in accordance with *Article 3, paragraph 2(2)*; and (ii) the right to receive the minimum wage rates fixed, which may not be subject to abatement by individual agreement, in accordance with *Article 3, paragraph 2(3)*.

In its reply, the Government states that the enterprise named in the representation has agreed to comply with the legislative provisions it violated. It has also been subjected to an administrative sanction in the form of a fine of 88,571,502 guaranis (about US$43,400) which it has appealed to have quashed. The matter is currently before the Constitutional Chamber of the Supreme Court of Justice. The Committee requests the Government to continue to provide information on developments in the affair and to send copies of any relevant decisions which may be handed down.

Furthermore, the Committee notes with interest Decrees Nos. 8542/95, 12459/96, 15245/96 and 16031/97 concerning the composition of the National Minimum Wage Council (CONASAM). It notes in particular that employers and workers are represented on an equal footing in this consultative body.

Article 4 (in conjunction with *point V of the report form*). In its previous comments, the Committee noted that section 259 of the Labour Code provides that "any worker who has received a wage lower than the established minimum is entitled to reclaim from his employer the amount remaining due. The labour administration shall establish a time period for the recovery of this amount, which may not exceed 30 days". The Committee also noted that, without prejudice to the other measures contained in the Code (section 384), section 390 provides that "employers who pay their workers wages lower than the minimum legal amount or the amount established by collective agreement shall be punishable by a fine amounting to a minimum of 30 days' wages for each worker concerned and double that amount for any repetition of the offence". The Committee also noted that responsibility for ensuring the application of the requirements set out in labour laws and regulations and compliance with the obligations contained in the Labour Code is entrusted to the labour inspection services, by virtue of Decree No. 3286 of 4 March 1964, which empowers those services to carry out direct inquiries to identify violations and refer them to the labour administration (Directorate of Labour). The Committee then requested the Government to indicate the measures which had been taken or were envisaged to ensure the application of the national legislation with a view to: (i) making possible the operation of the national bodies responsible for supervising the application of the standards respecting minimum wages; and (ii) guaranteeing, through the labour administration authority, the recovery of any further wages due to workers who have received wages lower than the applicable minimum wage.

The Committee notes the Government's indication that there is a body of labour inspectors who carry out inspections which may be ordinary, or special in cases of complaints, which numbered 767 during 1996. It notes that these inspections were not followed by sanctions. In addition, the Committee notes that section 259 of the Labour

Code provides specifically that the fixing of a minimum wage automatically modifies labour contracts stipulating a lower wage and that any contractual clause establishing a wage lower than the legal minimum is null and void.

The Committee requests the Government to supply information on the application in practice of this Article and, particularly, on the number of appeals presented to the labour administration authority. It requests the Government to continue to supply information on the application of the Convention in practice, in accordance with *point V of the report form*.

South Africa (ratification: 1932)

The Committee notes the information supplied in the Government's report in reply to its previous comments, including the text of the Main Agreement for the Iron, Steel, Engineering and Metallurgical Industry, as consolidated in 1996. It further notes the Government's statement that: (i) labour legislation in South Africa is currently undergoing a complete overhaul, and certain regulating measures are currently still in operation as part of the transition phase; (ii) the Labour Relations Act, 1956, has been repealed and replaced by Labour Relations Act No. 66 of 1995, as amended by the Labour Relations No. 42 of 1996.

The Committee hopes that these ongoing changes will take into account the Committee's comments concerning this Convention. It requests the Government to continue to provide information on any developments in this regard.

Effective fixing of minimum wages

Article 1 of the Convention. The Committee notes the Main Agreement for the Iron, Steel, Engineering and Metallurgical Industry, as consolidated in 1996. It notes that this agreement does not provide for minimum wages in this sector. It also notes the Government's indication that there are no specific measures taken or envisaged for the regulation of minimum wages during the period for which there is no collective agreement in force. In principle, however, the minimum wage would continue to be acceptable in the industry and the employer would not unilaterally be able to reduce the norm in the absence of the agreement without opening the business, enterprise or industry to an allegation of an unfair practice.

The Committee recalls the explanations provided in paragraph 62 of its 1992 General Survey on minimum wages, according to which the creation and maintenance of methods for fixing minimum wages is not enough to comply with the obligations arising from the Convention, but it is also necessary to use these methods for the effective fixing of minimum wages. The Committee hopes that, in the near future, the Government will take measures to ensure the fixing of minimum wages during the period for which there is no collective agreement in force.

Binding force of minimum wages

Article 3, paragraph 2(3). In its previous comments, the Committee referred to the Temporary Removal of Restrictions on Economic Activities Act of 1986, under which the State President may, by proclamation, suspend, or grant exemption from, the provisions of any enactment having force of law. It requested the Government to indicate measures taken to ensure that the application of the provisions of the Convention is not affected by proclamation made under the Act of 1986.

The Committee recalled that *Article 3, paragraph 2(3), of the Convention* requires minimum rates of wages to be binding on the employers and workers concerned and does not allow abatement except by collective agreement with the general or particular authorization of the competent authority. It also noted that section 2 (concerning consultation) of the 1986 Act provides only for optional consultation, inter alia, with persons representing the class of persons concerned.

The Committee notes with regret that the Government's report does not contain any indications with respect to the above request. It hopes that the Government will indicate any measures taken or contemplated to ensure the application of the provisions of the Convention, and in particular of *Article 3, paragraph 2(3)*, with regard to the proclamation made under the 1986 Act. It also hopes that the Government will provide information on any proclamation made under this Act that involves suspension of or exemption from enactments concerning the minimum rates of wages.

Turkey (ratification: 1975)

The Committee notes that the Government's report, due in September 1997, was only received in December 1997, during the Committee's session, but without the observation of the Confederation of Turkish Trade Unions (TÜRK-IŞ) which, according to the Government, was attached to the report.

The Committee notes the observation made by the Turkish Confederation of Employers' Associations (TISK) concerning the implementation of the minimum wage provisions in the country. The TISK states that the form and application of the minimum wage regulations, which is based on the Labour Act No. 1475/71, has no aspects that are contrary to the Convention. However, it makes various requests for changes to be made in the relevant legislation as concerns: (i) the determination of minimum wages by collective bargaining in the establishments covered by collective labour agreements; (ii) the need for redefinition of the minimum wage; (iii) the criteria for minimum wage determination; (iv) the renewal period for minimum wage; (v) the age limit for minimum wage; (vi) the tax burden on minimum wage; (vii) the relationship between legal fines and minimum wage; and (viii) the need for further consultation of employers' and workers' organizations in the framework of the Minimum Wage-Fixing Board.

The Committee notes that the report does not contain the Government's comments in response to this observation. It requests the Government to provide information in this respect.

Homeworkers and domestic workers

The Committee previously requested the Government to indicate the measures taken to ensure the existence of minimum wage fixing machinery and the effective fixing of minimum wages for categories of homeworkers considered to be workers under the terms of the Code of Obligations. It also requested the Government to indicate the measures adopted to ensure the existence of minimum wage fixing machinery and the effective fixing of minimum wages for domestic workers who respond to the criteria set out in *Article 1, paragraph 1, of the Convention* (absence of arrangements for the effective regulation of wages and the low level of wages).

The Government considers that as the persons under these categories of workers are not covered by the Labour Act No. 1475, it is not possible for them to benefit from the minimum wages. Despite being a new form of labour resulting from the developments in technology on the one hand, and in the labour market, on the other, there is neither any reliable data available to the extent of the practice of such new form of employment, nor any legal arrangement regulating them in Turkey. Therefore, the Government has started to study, with an open mind, the measures that can be adopted so as to bring the legislation and related implementation in line with the standards set by the ILO by taking into account all the Committee's comments. Pending the outcome of this undertaking, the Government requests the Committee to postpone taking a stand on this matter.

The Committee notes these indications and requests the Government to provide information concerning this review process so as to bring the legislation and practice for homeworkers and domestic workers into conformity with the Convention.

[The Government is asked to report in detail in 1998.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Angola, Austria, Bahamas, Barbados, Belize, Central African Republic, Colombia, Comoros, Democratic Republic of the Congo, Djibouti, Dominica, Gabon, Ghana, Grenada, Guinea-Bissau, India, Lesotho, Malawi, Mali, Myanmar, Nigeria, Papua New Guinea, Sierra Leone, Solomon Islands, South Africa, Turkey***.

Convention No. 27: Marking of Weight (Packages Transported by Vessels), 1929

A request regarding certain points is being addressed directly to *Viet Nam*.

Convention No. 29: Forced Labour, 1930

Bangladesh (ratification: 1972)

The Committee notes the Government's report.

1. Legal restrictions on termination of employment

In comments made for a number of years the Committee has noted that under the Essential Services (Maintenance) Act, No. LIII of 1952, it is an offence punishable with imprisonment for up to one year, for any person in employment (of whatever nature) under the central Government to terminate his employment without the consent of his employer, notwithstanding any express or implied term in his contract providing for termination by notice (section 3, section 5(1)(b), Explanation 2, and section 7(1)). Pursuant to section 3 of the Act, these provisions may be extended to other classes of employment. Similar provisions are contained in the Essential Services (Second) Ordinance, No. XVI of 1958 (sections 3, 4(a) and (b), and 5). The Committee asked the Government to indicate the measures taken or envisaged in respect of these provisions to ensure the observance of the Convention.

In its report the Government once again has indicated that there are sufficient protective measures in the provisions of the Factory Act, the Payment of Wages Act, the Shops and Establishments Act, and the Essential Services (Maintenance) Act, No. LIII of 1952. The Government refers in particular to the notice to be given and wages to be paid in lieu of notice by employers terminating employment of a permanent worker. The Committee takes due note of these legal requirements. As it has previously pointed out, however, these tend to protect workers in case of dismissal, while the Convention is concerned with a different situation, namely, the case of workers wishing to leave their employment on their own initiative.

The Committee notes the Government's statement that temporary restrictions on termination of employment to secure the supply of community services should not be construed as forced or compulsory labour and are permissible under *Article 9 of the Convention*.

In this respect, the Committee observes that under *Article 1, paragraph 1, of the Convention*, each Member of the ILO which ratifies it undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period; Article 9 of the Convention is part of a whole set of provisions establishing the conditions and guarantees under which, in exceptional cases and with a view to its complete suppression, forced labour could be used during a transitional period *(Article 1, paragraph 2, and Articles 4 to 24 of the Convention)*. Since the Convention, adopted in 1930, calls for the suppression of forced labour within the shortest possible period, to invoke at the current time (67 years after its adoption) that certain forms of forced or compulsory labour comply with one of the requirements of this set of provisions, is to disregard the transitional function of these provisions and contradict the spirit of the Convention.

In the view of the Committee, use of a form of forced or compulsory labour falling within the scope of the Convention as defined in *Article 2* may no longer be justified by invoking observance of the provisions of Article 1, paragraph 2, and Articles 4 to 24, although the absolute prohibitions contained in these provisions remain binding upon the States having ratified the Convention.

The Committee notes the Government's statement that, as advised by the Committee, the legislation will be re-examined. The Committee hopes that the Government will, without further delay, take the measures necessary to bring the Essential Services (Maintenance) Act, No. LIII of 1952, and the Essential Services (Second) Ordinance, No. XLI of 1958, into conformity with the Convention.

2. *Children in bondage*

Child domestic workers

In its previous comments the Committee referred to information brought before the Working Group on Contemporary Forms of Slavery of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, alleging that children of underprivileged classes were exploited, inter alia, as domestic workers in private houses, bidi and tobacco factories and that the protective legislative and constitutional provisions were not implemented.

The Committee expressed the hope that the Government would provide information on measures taken or envisaged, following the Asian Regional Seminar on Children in Bondage (Pakistan, 23-26 November 1992), when the programme of action against child bondage was adopted, as concerns the situation, for instance, of children working "unseen" as domestic servants. Referring to *Article 25 of the Convention*, under which measures must be taken to ensure that penalties imposed by law are really adequate and strictly enforced, the Committee expressed the hope that the Government would provide detailed information on inspections carried out, on proceedings brought and convictions made, and on penalties imposed on the child labour exploiters.

The Committee notes that in its latest report, the Government states that Bangladesh has no bonded labour; however, in order to eliminate the "insignificant amount" of child labour in the garment sector, it signed a Memorandum of Understanding (MOU) with the ILO/International Programme on the Elimination of Child Labour (IPEC) in October 1994. The Government further indicates that under IPEC, 24 projects had been implemented since 1995, and that 24 other projects were under implementation in various fields in 1996. The Government points out that the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) has signed a separate MOU with UNICEF and the

ILO with a view to rehabilitating terminated child workers from the garment sector. According to the Government, various programmes under this MOU are also being implemented under the supervision of ILO/IPEC, UNICEF and the Government.

The Committee has taken note of the concluding observations by the United Nations Committee on the Rights of the Child on the report submitted by Bangladesh (UN doc. CRC/C/66, 6 June 1997). That Committee expresses its concern (paragraph 147) "about the large number of children who are working, including in rural areas, as domestic servants as well as in other areas of the informal sector. It is concerned that many such children work in hazardous and harmful conditions, and are often vulnerable to sexual abuse and exploitation".

The Committee has also taken note of a communication dated 29 October 1997 through which the World Confederation of Labour submitted comments on the application of the Convention, and to which it attached a number of documents, including "Child domestic workers: Is servitude the only option?", published by Shoishab Bangladesh. A copy of this communication was dispatched to the Government on 13 November 1997 so that it could make any comments it deemed appropriate.

According to these allegations, the phenomenon of child domestic workers in Bangladesh is a complex situation that evolves from certain social practices that have remained unchallenged, and from the socio-economic realities of the country. The age of the child domestic workers ranges from 8 to 16. However, if a mother is a domestic servant in a household, often her very young children get drawn into child domesticity before they know of any other lifestyle. Child domestic workers are predominantly female. The tasks expected or demanded of them are open-ended or, at best, ill-defined. Working hours are equally vague, and often remuneration is not discussed clearly and openly. The child domestics' relationship with their employers varies widely. However, in all cases, the employer has total power over all aspects of their lives.

According to the allegations, the phenomenon of child domesticity in Bangladesh needs to be considered with the situation of domestic workers in general. In this well-developed subculture there are several categories of workers, including the *bandha*, the *chhuta*, skilled domestics, and the *pichchis*. The *bandha* domestic workers are live-in and full time. "*Bandha*" literally means "tied-down". These are servants who are exclusively engaged in one household, having wide-ranging activities, and almost no limit to their working hours. They are provided accommodation, often within the household. The quality of accommodation depends on the economic conditions and social attitudes of the employer. This group includes all categories, i.e., children (boys and girls), men and women. Depending on gender and age, the range of their work may vary, but they are expected to be involved in every chore, indoor and outdoor. The category of *chhuta*, meaning "non-bound", consists of domestic workers who work part time, do several specific and usually well-defined activities, and have their own households, as do skilled domestics. The *pichchis*, or "tiny ones", have an independent association with the employers. They run various errands for all members of the family and have no other specific or defined responsibilities. Their major problem is that this work is perceived as not being substantial, while they face constant conflicting demands from different members of the family throughout the day. The *pichchis* are made up of comparatively more boys than girls, are live-in servants with food provided, and usually receive no regular cash payments. All child domestics really fall within the categories of *bandha* and *pichchis*.

The allegations indicate that child domestics have very wide-ranging activities which are difficult to classify into well-defined categories. However, one can arrive at a simplified classification of two broad areas: labour-intensive tasks and the running of errands. Labour-intensive tasks may stretch over all waking hours of the day, and include sweeping, washing, dusting, floor polishing, cooking and helping to cook, grinding spices, washing clothes, etc. As for running errands, child domestics are always on call by every family member to perform any task. These jobs are often tedious, but child domestic workers are expected always to be on their toes, never be tired, and always on their best behaviour. As these are small and isolated activities, they are never perceived as real work.

The child domestic workers are perceived as servants with endless working hours. According to the allegations, even when domestic workers have completed their assigned chores, such as washing clothes, cleaning the house, washing kitchen utensils, cooking or grinding spices, employers still have power over their time. They cannot plan to utilize their "free" time according to their needs or wishes, because they are always on call for all types of large and small jobs, even fetching a glass of water. They can be called upon at any time throughout the day or night. Even young girls can be awakened in the middle of the night for any type of job, from providing food for unexpected guests to helping care for a sick baby throughout the night. According to the allegations, child domestic workers do not have any regular holidays or any days off. No one recognizes a child domestic's need or right to have any time or means for recreation. Even if the employer's family goes on a holiday, the domestic accompanies them in her usual role.

The allegations indicate that no matter what the socio-economic conditions of the employing families, the age of the domestic workers, or the strenuousness of the chores, the workers' daily routine is the same. They wake before anyone else in the household and are the last to go to sleep. When the family goes out on social visits, the employer will offer the services of the domestic worker to the host family, which can be seen as an extension of social courtesy on the part of the guest family. Society sees the children as the property of the employer, and 24 hours a day, 365 days a year, the domestic servant's status remains unchanged. The allegations indicate that, from a very impressionable age, domestic workers live within a family, totally devoid of any rights, surrounded by their own loneliness. This is the definition of child domestic work. In exchange for this lifestyle of duties, they get food, shelter, clothing and treatment depending on the socio-economic status of the employing family, as well as their attitudes and beliefs. The child domestics are often the recipients of all forms of verbal abuse and sometimes even physical abuse. They are also often under threat of dismissal and being thrown into the street to a vagrant life.

According to the allegations, the employer holds total power and control over the lives of child domestic workers, and the key perception of child domestics of themselves is that this life of servitude is their fate.

The Committee requests the Government to provide full information on these allegations. It urges the Government to take strong and effective measures to eradicate forced labour of children and to report on the measures adopted or contemplated.

3. *Trafficking*

The Committee has taken note of the report submitted by the Government of Bangladesh to the United Nations Committee on the Elimination of Discrimination against Women (UN doc. CEDAW/C/BGD/3-4, 1 April 1997), in which the Government states that "the phenomenon of trafficking seems to be increasing" (paragraph 2.5), and that "in most cases trafficking is for prostitution or leads to prostitution". The Government, referring to a non-governmental source, reports that "about 200,000 women and children have been trafficked to the Middle East in the last 20 years. Different human rights activists and agencies estimate 200-400 young women and children are smuggled out every month, most of them from Bangladesh to Pakistan". The Government reports that trafficking "is carried out by regional gangs who are well organized and who have links with the various law-enforcing agencies, which is why only a very small percentage of the traffickers are caught or the victims recovered".

The Government states that it "is aware of the problem of trafficking and has taken up measures to prevent it. One such measure is the strengthening of border posts ... Another measure is the strengthening of legislation and increasing punishments for trafficking". It adds that "there is a need for stronger action against members of law-enforcing authorities who are themselves involved in trafficking" (paragraph 2.5.1 of the same document). The Committee notes that, according to the Government's report, the penalties imposed under section 8 of the Women and Child Repression (Special Provisions) Act, 1995, for trafficking and associated offences include life imprisonment and fines.

The Committee notes from the IPEC Trimester report (May 1997) that the Ministry of Women and Children's Affairs, in collaboration with ILO-IPEC and UNICEF, agreed in early 1997 to implement a country-wide programme on trafficking of children, and that the Government has participated in a number of recent national or local seminars, workshops, and conferences, including a workshop on trafficking of children in February 1997.

The Committee has taken note of the concluding observations by the United Nations Committee on the Rights of the Child on the report submitted by Bangladesh (UN doc. CRC/C/66, 6 June 1997). In its conclusions the Committee expresses "its serious concern about the occurrence of trafficking and sale of children". The Committee considers that "[l]ack of enforcement and failure to implement existing legislation at all levels, from law-enforcement agencies to the judiciary, need to be addressed".

Referring to Article 25 of the Convention, under which the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and the ratifying State must ensure that penalties imposed by law are really adequate and strictly enforced, the Committee requests the Government to provide full information on penalties imposed, copies of court decisions, and the results achieved through the different initiatives taken by the Government to ensure that not only the legislation but also its implementation complies with the provisions of the Convention.

4. Allegations concerning the situation in the garment industry

The Committee also notes allegations presented by the World Confederation of Labour in the communication mentioned above, relating to the situation in the garment industry. According to the trade union's allegations, "the Bangladesh garment industry employs more than 1 million workers, mainly women and children ... The legal minimum wages are rarely ever paid; forced overtime is commonplace but is compensated at below the legal rate. Bangladesh workers have a legal right to Friday as a holiday, but employers do not observe it and they frequently fire workers who demand it; and workers go for months on end without receiving any salary".

The Committee asks the Government to provide detailed comments on these allegations.

Burundi (ratification: 1963)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its previous comments, the Committee noted the information provided by the Government in June 1993 to the effect that the process of adapting and harmonizing legislation with the Convention was continuing; a technical file on this subject, of which the Government supplied a copy, was submitted in March 1993 by the Minister of Labour to the Minister of the Interior. The Committee noted that according to this file the draft texts for repealing the provisions concerned had already been prepared.
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> The Committee noted that in its report received in 1994 the Government appealed for comprehension by the ILO supervisory bodies of the fact that the approaches to the competent services of the Ministries of Justice and of the Interior are not yet complete as political events have not allowed the consultations initiated by the Ministry of Labour to continue normally. Nevertheless, the Government promised to make every effort to ensure speedy completion as soon as the political and administrative situation in the country has returned to normal.
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> The Committee has taken due note of this commitment. It hopes that the Government will soon be in a position to supply information on the specific measures it has adopted on the following points, raised in previous comments:
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> 1. In its previous comments concerning Ordinances Nos. 710/275 and 710/276, establishing obligations respecting the conservation and utilization of the land and the obligation to create and maintain minimum areas of food crops, the Committee emphasized the need to set out in the law the voluntary nature of agricultural work.
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> The Committee notes the Government's statement in the above note that measures to repeal these Ordinances should be envisaged in the very short term. The Committee requests the Government to supply the texts to repeal the above Ordinances, once they have been adopted.
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> 2. The Committee referred to certain texts relating to compulsory cultivation, porterage and public works (Decree of 14 July 1952, Ordinance No. 1286 of 10 July 1953, Decree of 10 May 1957) and recommended that they be formally repealed.
>
> The Committee noted the Government's statement that explicit measures to repeal the above texts are justified, principally due to their colonial nature and the fact that they have fallen into abeyance, and that measures have been undertaken with a view to repealing them.
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> The Committee notes that the file supplied by the Government confirms this intention. The Committee requests the Government to supply a copy of the texts which are adopted for this purpose.
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> 3. The Committee noted that Legislative Decree No. 1/16 of 29 May 1979 establishes the obligation, under penalty of sanctions, to perform community development work.
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> The Committee notes that the above file recommends that the text in question be repealed and be replaced by the relevant provisions of Legislative Decree No. 1/11 of 8 April 1989 to reorganize communal administration. The Committee requests the Government to supply information on the provisions adopted in this respect.
>
> 4. With reference to sections 340 and 341 of the Penal Code, which establish sanctions for vagrancy and begging, and to its previous comments, the Committee notes that an opinion has been requested from the Ministry of the Interior on this subject. The Committee requests the Government to supply information concerning this opinion and on the programme of vocational rehabilitation which the Government considers should serve to avoid vagrancy and begging by assisting persons without employment. The Committee notes Ordinances Nos. 660/161 of 1991, 660/351/91 and 660/086/92, the texts of which were supplied by the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Cambodia (ratification: 1969)

1. *Article 2, paragraph 2, of the Convention.* In its previous comment, the Committee referred to Sub-Decree No. 10 SDEC of 28 February 1994 establishing a Workday for Irrigation and Agriculture which provides that "all people, armed forces, officials and public servants have an obligation to perform irrigation work for 15 days a year, and students for seven days a year" (section 3). The Committee noted that the work provided for in this Sub-Decree did not seem to meet the criteria for "minor communal services" which fall outside the scope of the Convention. It requested the Government to indicate the measures taken to ensure compliance with the Convention on this matter.

In its report, the Government states that Sub-Decree No. 10 SDEC has established a civic service for the purpose of restoring infrastructures in rural regions after the disasters — floods and drought — which occur every year. It stresses that participation in this work is voluntary and that, in practice, a single day's work was done in the previous year. In addition, the Government states that the persons carrying out this work receive payment in kind and benefit from an irrigation system for their paddy fields.

The Committee takes due note of these indications but observes that the voluntary nature of participation in the work does not follow from Sub-Decree No. 10 of 1994 which mentions that participation is obligatory. The Committee also observes that the length of service required by the Sub-Decree is seven and 15 days per annum respectively for students and other persons. Finally, it notes that the whole labour force of a province has to work on a single worksite and that there is no provision for consultation regarding the need for the work either with those who are expected to do the work or with their direct representatives. Consequently, referring to the explanation given in paragraph 37 of its 1979 General Survey on the abolition of forced labour, the Committee considers that this work does not meet the criteria of "minor communal services" exempted from the scope of the Convention under its *Article 2(2)(e)*. Furthermore, this restoration work, which is foreseeable and takes place annually, does not fall within the exception provided for in *Article 2, paragraph 2(d)*, concerning cases of emergency; as the Committee pointed out in paragraph 36 of the same General Survey, the examples given in the Convention show that cases of emergency involve a sudden, unforeseen happening calling for instant counter-measures. Lastly, referring to the indications given in paragraph 28 of its 1968 General Survey on forced labour, the Committee recalls that where holders of irrigated land are required to participate in the maintenance of irrigation channels from which they derive direct benefit, their obligations — provided that these are commensurate with the benefits enjoyed — may be regarded as a form of consideration due from the landholder. By contrast, Sub-Decree No. 10 of 1994 makes the work compulsory for the whole population, and not only for the landholders directly concerned.

The Committee notes that under section 15 of the new Labour Code of March 1997 "Forced labour is prohibited absolutely in conformity with the provisions of Convention No. 29". It hopes that the Government will revise Sub-Decree No. 10 SDEC of 28 February 1994, as well as all the decisions taken in application of this Sub-Decree, in the light of the Convention and of section 15 of the Labour Code, and that it will report on the measures taken or contemplated to ensure observance of the Convention in this respect.

2. *Article 25.* The Committee notes that under section 369 of the new Labour Code of 1997, persons violating the provisions of section 15 on the prohibition of forced labour are liable to a fine of 61 to 90 days' reference wages or imprisonment ranging from six days to one month.

The Committee recalls that under *Article 25 of the Convention*, the penal sanctions imposed by law must be really adequate. It hopes that the Government will take the necessary measures to ensure compliance with the Convention on this point.

Chad (ratification: 1960)

1. In its previous comments, the Committee referred to Ordinance No. 2 of 27 May 1961 on the organization and recruitment of the armed forces, and Decree No. 9 of 6 January 1962 on the recruitment of the army, which permit the assignment of conscripts to work of general interest.

The Committee also noted the Government's statement that the above-mentioned texts were repealed by Ordinance No. 19/PR/MD/AC of 1972 which was in turn repealed by Ordinance No. 006 PR/92 of 28 April 1992, issuing the general conditions of service of military personnel and of which a copy was supplied.

Given that the matter previously raised related to the assignment of conscripts to work which was not purely of a military character — which is contrary to the provisions of the Convention — and that Ordinance No. 006 PR/92 of 1992 issuing the general conditions of service of military personnel contains no provisions relating to military service, the Committee requests the Government to supply copies of the texts governing military service with its next report.

2. Since 1962, the Committee is referring to section 2 of Act No. 14 of 13 November 1959 which provides that persons who have been sentenced for any crime or offence can be used for work of public interest during a period the duration of which will be determined by an order of the Prime Minister but which must not exceed one-third of the length of the restriction as to residence.

The Committee noted that under this provision, penitentiary labour can be imposed by the administrative authorities and requested the Government to repeal the provision in question so that, in accordance with the Convention, penitentiary labour may be imposed only by decision of a court of law.

The Committee notes the Government's information in its latest report to the effect that the Ministry of the Public Service, Labour, Promotion of Employment and Modernization is currently consulting with the Ministry of Finances and the Ministry of the Interior on the question of repealing or amending section 2 of Act No. 14 of 13 November 1959. The Committee trusts that the Government will repeal or amend the provision in question in the near future and will inform of any progress made in this matter.

3. For more than 20 years, the Committee has been referring in its comments to the provisions of section 982 of the General Code of Direct Taxes which empowers the authorities to exact labour for the recovery of taxes and has asked the Government to amend this provision to bring it into conformity with the Convention.

In its latest report, the Government mentions the current dialogue between the Ministries of Labour, Justice and the Interior on repealing section 982 of the General Code of Direct Taxes. The Committee notes this information and trusts that the Government will repeal this provision in the near future.

The Committee is addressing a direct request to the Government on other matters.

Congo (ratification: 1960)

1. Since 1961, the Committee has been asking the Government to repeal Act No. 24-60 of 11 May 1960, which permits the requisitioning of persons to undertake work of public interest that is not confined to cases of emergency and imposes penalties of imprisonment ranging from one month to one year in the event of refusal.

The Committee notes that, after having long affirmed its intention of repealing the above Act, the Government now states that it is prepared only to restrict its scope to cases of emergency as laid down in *Article 2, paragraph 2(d), of the Convention*.

The Committee requests the Government to take the necessary measures to ensure respect for the Convention on this point and to indicate progress made in this direction.

2. In its previous comments, the Committee noted that the Government may call upon the population to perform certain sanitation work. The Government indicated that this practice derives from section 35 of the Statutes of the Congolese Labour Party. In its latest report, the Government indicates that mobilization of the population for work of collective interest — a practice which was in force at the time of the single-party system — no longer exists, pointing out that such tasks (weeding, sanitation work) are now carried out on a voluntary basis by associations and by the employees of the State and local communities.

The Committee once again requests the Government to indicate the measures which have been taken or are envisaged to establish in the law or in regulations the voluntary nature of the work performed by the population, so as to ensure effective observance of the Convention.

3. *Article 2, paragraph 2(a).* On several occasions, the Committee has drawn the Government's attention to section 4 of Act No. 11-66 of 22 June 1966 establishing the National People's Army and section 1 of Act No. 16 of 27 August 1981 introducing compulsory national service. The former provides that the Army must participate actively in the tasks of economic construction for effective production and the latter stipulates that national service is an institution intended to enable every citizen to take part in the defence and building of the nation and that it has two aspects, military service and civic service.

The Committee drew the Government's attention to *Article 2, paragraph 2(a)*, of the Convention which provides that work or service exacted in virtue of compulsory military service laws is excluded from the scope of the Convention only when it is performed for work of a purely military nature. The work exacted from recruits as part of national service, including work related to the development of the country, is not of a purely military character. The Committee referred in this connection to paragraphs 24 to 33 and 49 to 62 of its 1979 General Survey on the abolition of forced labour.

In regard to section 4 of Act No. 45/75 of 15 March 1975 which exempted from the prohibition of forced or compulsory labour, inter alia, "obligations arising out of the civic service for youth", the Committee notes with interest that this exemption is not maintained in section 4 of Act No. 6-96 of 6 March 1996 amending and supplementing certain provisions of the Act of 15 March 1975 establishing the Labour Code for the People's Republic of the Congo.

The Committee notes the information supplied by the Government that the directing role of the single party has disappeared and that the National People's Army has been replaced by the Congolese Armed Forces which are in the process of restructuring. However, the recent report does not contain information regarding the tasks carried out by recruits in application of the provisions of Act No. 16 of 1981 on compulsory national service.

The Committee once again requests the Government to provide information on the effect given in practice to the provisions of Act No. 16 of 27 August 1981, to supply a copy of the Decree adopted under section 12 of this Act and to indicate the measures taken or envisaged to ensure compliance with the Convention on this matter.

4. In previous comments, the Committee referred to section 17 of Act No. 31-80 of 16 December 1980 on guidance for youth under which the party and the mass organizations would gradually establish the full conditions for the formation of youth brigades and the organization of youth worksites.

The Committee noted that a draft decree relating to voluntary work by young people was in the process of being approved and asked for precise information on the nature of the work carried out, the number of persons concerned and the duration and conditions of their participation.

The Committee notes the Government's indication that these practices fell into abeyance with the advent of democracy in 1991 of which the immediate consequence was the disappearance of the directing role of the single party, but notes that the report does not indicate whether Act No. 31-80 is still in force and, if so, does not contain the information requested on its application in practice.

The Committee requests the Government to indicate the measures taken or envisaged to bring national legislation into conformity with the Convention on this subject.

5. The Committee has been informed that traditional forms of slavery are practised in the country, particularly forced labour by Pygmies who are obligated for perpetuity to their Bantu patron in plantations in the north in the Ouesso district. Other information indicates that there are cases of slavery among Bantus in the port town of Pointe Noire. The Committee requests the Government to supply any relevant information which it obtains on the situation.

Côte d'Ivoire (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its previous comments, the Committee referred to sections 24, 77 and 82 of Decree No. 69-189 of 14 May 1969 (issued under sections 680 and 683 of the Code of Criminal Procedure) under which prison labour may be hired out to private persons.
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> In response to the Government's reference to the system of "semi-freedom", this Committee noted that this system is governed by sections 25, 83 and 87 of Decree No. 69-189 and allows prisoners to work for private enterprises under the terms of employment contracts which have been freely concluded by them with their employer and under the normal conditions of work as regards, for example, occupational accidents. This is not the case of prisoners governed by sections 24, 77 and 82 of the Decree.
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> The Committee noted that the Convention, in *Article 2, paragraph 2(c)*, expressly prohibits persons, from whom work is exacted as a consequence of a conviction in a court of law, from being placed at the disposal of private individuals, companies or associations. Only work performed under the conditions of a free employment relationship can be held to be compatible with this prohibition; this necessarily requires the formal consent of the person concerned and, in the light of the circumstances in which this consent is given, guarantees and safeguards in respect to wages and social security which make it possible to consider that it is a real free employment relationship.
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> The Committee noted from the information in the Government's report received in 1993 that the Minister of Justice plans to submit to the Council of Ministers draft amendments to the provisions of the above-mentioned Decree respecting prison labour which will bring them into closer conformity with the Convention. It hopes that the Government will provide

information on the provisions adopted to bring the legislation into conformity with the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Democratic Republic of the Congo (ratification: 1960)

1. The Committee notes the general explanations given by the Government in its latest report to the effect that the delay in aligning legislative and regulatory texts which are contrary to the provisions of the Convention is due to the political and economic difficulties facing the country. The Committee also notes the Government's undertaking to comply with the provisions of the Convention as soon as the socio-political climate returns to normal. The Committee notes the adoption of constitutional Legislative Decree No. 003 of 27 May 1997 concerning the organization and exercise of power in the Democratic Republic of the Congo and, particularly, section 13 which stipulates that, "provided they are not contrary to the provisions of this constitutional legislative decree, the legislative and regulatory texts existing at the date of its promulgation remain in force until they are repealed".

2. For several years the Committee has been asking the Government to repeal or amend certain legislative texts and regulations which are contrary to the Convention. They are:

- Act No. 76-011 of 21 May 1976 concerning national development efforts and its Implementing Order No. 00748/BCE/AGRI/76 of 11 June 1976 which requires, under penalty of penal sanctions, every able-bodied adult person who is not already considered to be making his contribution by reason of his employment (political representatives, wage-earners and apprentices, public servants, tradesmen, members of the liberal professions, the clergy, students and pupils), to carry out agricultural work and other development work as decided by the Government;
- sections 18 to 21 of Legislative Ordinance No. 71/087 of 14 September 1971 on minimum personal contributions, which provides for the imprisonment involving compulsory labour of tax defaulters by decision of the chief of the local community or the area commissioner, as a means of recovering the minimum personal contribution.

The Committee noted the information reiterated by the Government stating that there were draft amendments to the provisions in question. It observes that the Government's latest report contains no information on the measures taken to bring these provisions into conformity with the Convention.

The Committee expresses strongly the hope that the Government will shortly take the necessary measures to ensure full application of the Convention.

3. *Article 2, paragraph 2(c), of the Convention.* The Committee drew the Government's attention to Ordinance No. 15/APAJ of 20 January 1938 respecting the prison system in native districts, which allows work to be exacted from detainees who have not been sentenced.

The Committee noted, on the one hand, the Government's indications that the text had fallen into disuse and was contrary to Ordinance No. 344 of 17 September 1965 governing prison labour and, on the other, the Government's intention to repeal it.

The Committee also noted the information supplied by the Government to the effect that the Supreme National Conference has decided to reform the penitentiary system and repeal certain provisions of the law. The Committee observes that, in its latest report, the

Government provides no information on this matter. The Committee expresses strongly the hope that measures will be taken in the near future to bring national legislation and practice into conformity with the Convention.

4. *Article 25*. In its previous comments, the Committee stressed the need to include a provision in the national legislation establishing penal sanctions for persons who unlawfully exact forced or compulsory labour, in accordance with *Article 25* of the Convention.

The Government indicated that, in view of the changes in industrial relations and personal freedoms, the revised draft of the 1967 Labour Code was under consideration and that provisions establishing penal sanctions for persons exacting forced labour would be inserted into it.

The Committee notes this information and expresses strongly the hope that the Government will shortly bring legislation into conformity with the requirements of *Article 25* of the Convention.

India (ratification: 1954)

1. The Committee recalls that the application of this Convention by India has been examined on a number of occasions by the present Committee and in the Conference Committee, most recently in 1995. It notes the detailed information submitted by the Government representative at that time, as well as the report received in October 1996, too late to be considered at the Committee's previous session. It recalls that the Conference Committee stated that in the light of the discussion and its conclusions over a number of years, and in light of the inadequate progress which had been made, it was deeply concerned over the situation and urged the Government to adopt effective measures to eliminate bonded labour.

Identification of bonded labourers and magnitude of the problem

2. Since many years this continues to be a disputed issue. The Committee has previously noted that the Government has carried out no comprehensive survey of the magnitude of the problem, but that it estimates that there are some 256,000 bonded labourers in the country, based on the number that have been identified and freed; no estimate is provided by the Government of the number that may yet remain in bondage. Other estimates, in particular by non-governmental organizations such as the Bonded Labour Liberation Front, refer to as many as 5 million adult bonded labourers and 10 million child bonded labourers, or even higher; while estimates by other reputable observers range between these two figures. The Committee expressed concern in its previous report that work to be undertaken by the National Sample Survey Organization (NSSO) on the proposal of the Ministry of Labour to gather information on bonded labour was not scheduled before 1998-99; and as indicated below it notes that the Government has still not decided whether a comprehensive survey needs to be undertaken.

3. The Committee also notes in this connection the final observations of the Human Rights Committee of the United Nations (CCPR/C/79/Add.81, 4 August 1997) on considering the state report of India on the observance of the International Covenant on Civil and Political Rights, which stated:

> 29. The Committee expresses concern at the extent of bonded labour, as well as the fact that the incidence of this practice reported to the Supreme Court is far higher than is mentioned in the report. The Committee also notes with concern that eradication measures which have been taken do not appear to be effective in achieving real progress in the release

> and rehabilitation of bonded labourers. Therefore the Committee recommends that a thorough study be urgently undertaken to identify the extent of bonded labour and that more effective measures be taken to eradicate this practice, in accordance with the Bonded Labour System (Abolition) Act of 1976 and Article 8 of the Covenant.

4. Among the issues in this connection is the division of responsibility between the central and state governments. The Government has indicated that it is the responsibility of the states to identify and release bonded labourers, and in each of its last several reports it has referred to consultations undertaken between the Ministry of Labour and the state labour authorities. In its previous report it referred to meetings held in 1993 in which it was decided to constitute a committee of labour secretaries to study and recommend a workable definition of bonded labour and the modalities and procedures for the rehabilitation of those identified. The Government indicated in 1995 that the report of the committee of labour secretaries had been received, but did not supply a copy to the ILO; in its latest report it states that the report is still under study and that the Government is yet to make a final decision. It has however stated that the surveys were proposed on the basis of the existing definition in the Bonded Labour System (Abolition) Act, and not on any fresh definition that may be accepted by the Government at some future date.

5. The Committee notes that, as earlier indicated, the state governments have all taken a stand that there are no more bonded labourers to be identified, released and rehabilitated in their states, and they have reiterated this in the Supreme Court. In March 1995 the Supreme Court issued interim orders appointing an advocate and a voluntary organization in each of 13 states to verify their claims and to determine whether the practice of bonded labour has actually been eliminated. The Government states in its report that it is awaiting the outcome of this case "before taking a final decision on the need for a fresh all-India survey to discover the existence of bonded labourers, if any".

6. The Committee takes due note of this information, and asks the Government to communicate a copy of the decision of the Supreme Court, and of any interim decisions it may make on this matter, as soon as possible. It notes that, while no information has yet been received from the Government, the Office has received communications under article 23 of the Constitution, from one of the voluntary organizations appointed, the Mahabugnagar District Palamoori Contract Labour Union, in May 1996 and May 1997. The Office has communicated copies of these communications to the Government and requested it to provide comments on them for the Committee's consideration, but no reply to either of them has been received from the Government. Both communications indicate that this organization, one of several working on the problem, has reported to the Supreme Court the existence of bonded labour in specified circumstances, and included reports of the release by magistrates of some of the bonded labourers identified. It reports that a large number of cases of bonded labour are pending before courts across India.

7. The Committee expresses its concern at the continuing conflict between widespread reports from many sources of the continued existence of bonded labour in the country, and the position of the state governments which are responsible for this subject to the effect that the phenomenon no longer exists. At the same time the Government itself, as well as other sources, continues to indicate that bonded labourers are being identified and released in practice. Several such instances were noted in some detail in the Committee's previous comments. The Committee therefore urges the Government to take strong and effective measures to identify and release bonded labourers in the country and to gather statistics which will allow a reliable picture of the problem and the monitoring of the effectiveness of measures to correct it.

Responsible bodies

8. As indicated, there is a division of responsibilities for dealing with this question. The Committee has previously referred to the proposal to set up a national commission on bonded labour to implement the 1976 Act, and to the decision that it was unnecessary to do this in view of the establishment in 1993 of the National Human Rights Commission. The Government has again reported that the meeting of state labour secretaries referred to above is still of this opinion. The Government has also indicated that there is no need to establish a network of agencies to supervise and coordinate the abolition of bonded labour, as had been recommended by the National Commission on Rural Labour in 1991. The Committee notes these indications, and reiterates its regret that there is now no regular overview of the situation published by any government agency, as was previously the case until the abolition of the post of Commissioner for Scheduled Castes and Schedule Tribes, and its replacement by a Commission of the same title which apparently has as yet published no reports.

9. Noting that the Government considers that the National Human Rights Commission should deal with this problem at the national level, the Committee requests the Government to indicate what powers this Commission has in this regard, and whether it has received and dealt with complaints on bonded labour, or carried out other activities in this connection. Please also indicate what action has been taken by the Commission to implement the Bonded Labour System (Abolition) Act, 1976.

10. In previous comments the Committee has asked for information on the functioning of *vigilance committees* which the 1976 Act requires to be established to deal with this problem, and in its previous report the Government supplied information on the institution of such committees in several states. The Committee noted that, in a report published in 1991, the National Commission on Rural Labour stated that while a few vigilance committees were doing good work, most had not been established or had not been active. The Government states again in its report that, according to reports submitted by state governments, these committees are in place and are functioning well. In the above-mentioned comments received from the Mahabugnagar District Palamoori Contract Labour Union, it is however indicated that these vigilance committees do not exist in most places. In view of the contradictory information received, the Committee hopes the Government will clarify this issue in its next report, on the basis of information received both from the state governments and from other sources.

11. As concerns the *involvement of trade unions* in ending bonded labour, the Committee recalls that the Government has indicated that, because bonded labour usually takes place in the informal and unorganized sectors, the involvement of trade unions was not feasible. The Committee of Experts and the Conference Committee have referred in this connection to the existence of bonded labourers in several sectors such as stone quarries, brick kilns, building and road construction, forestry, bidi workers, carpet weavers, etc. The Government indicates in its report that workers in these sectors do have the right to organize, and the Committee notes with interest that a Central Board of Workers' Education has been set up. This Board conducts awareness sessions and training programmes for workers in the small-scale and unorganized sector, to inform them of their rights, and that such programmes have taken place in 1995-96 in several of the sectors mentioned above. The Government notes that these are not programmes with a wide reach. Nevertheless, the Committee hopes the Government will be able to encourage such training in the future, and that it will find ways to work with both trade unions and employers' organizations to identify and eliminate bonded labour wherever it may occur.

12. There has also been discussion previously of the need to involve voluntary agencies in the fight against bonded labour. The Government indicates in its report that the centrally sponsored scheme for providing financial assistance to these organizations has now been transferred to the states, but gives no indication of how it is functioning under state management. Please provide detailed information in this regard in the next report.

Rehabilitation

13. The Committee has previously noted the considerable time lag between liberation from bonded labour and rehabilitation, and reports of poor follow-up leading to a relapse into bondage. The figures provided by the Government in its most recent report indicate an improvement, with about 7,500 bonded labourers awaiting rehabilitation in May 1995 as compared to more than 10,000 at the time of the previous report. This figure of 10,000 was taken as the target for 1995-96, but the Government has reported that by March 1996 only 1,115 had been rehabilitated. It was expecting at the time of the report to meet with state governments on this shortly, and the Committee requests the Government to provide more detailed information on the problems encountered, the reasons for slow processing and the present situation, taking into account also any newly identified bonded labourers.

14. The Committee notes the information in reply to its previous request concerning bonded labourers designated "not available for rehabilitation", who are said to have died or migrated after release. This may be another indication of the slow pace of rehabilitation.

15. The Committee previously noted that under the centrally sponsored scheme for rehabilitation a sum of 6,250 rupees was to be spent for the rehabilitation of each bonded labourer, and questioned whether this sum was adequate to the needs of rehabilitation. It welcomes the statement in the report that this sum has now been increased to 10,000 rupees.

16. The Committee had previously noted with interest the details supplied by the Government on the measures taken in nine states for the integration of the centrally sponsored scheme for rehabilitation with other programmes, and asked the Government to provide further information in this regard. It notes that the Government has reported several kinds of measures available to rehabilitate bonded labourers, including allotment of houses and land, providing employment under the Employment Assurance Scheme, social security coverage in several respects, admission to schools, the organization of cooperative ventures and a credit scheme. The Committee notes the statement that land-based schemes have proven successful in rehabilitation, and that given the pressure on land and the need to decrease delays, state governments have been given the right to disburse assistance under the centrally sponsored scheme. The Committee notes that it is difficult to form a general impression of how well these different rehabilitation schemes work in practice, and requests the Government to provide such an assessment in its next report.

Enforcement

17. In its previous comments, the Committee analysed in detail the number of prosecutions, convictions and acquittals in different states under the Bonded Labour (Liberation) Act, 1976. It also questioned the adequacy of the penalties imposed (the fines are only 2,000 rupees under the 1976 legislation), and asked for updated information on both these questions. The Government has indicated that no additional prosecutions have been brought because of the absence of any fresh identification of bonded labour. It also

indicates that the penal provisions under the Act are quite stringent, but does not comment on the amount of the fine provided for in the legislation. The Committee can only take note of this information, and requests the Government to indicate in its next report whether any further actions have been brought and how they are disposed of, in view in particular of the Supreme Court action referred to above. The Committee also requests current information on the penalties for infringement of the Act.

Children in bondage and other forms of compulsory labour

18. The Committee notes that observations were received from the World Confederation of Labour on the question of bonded child labour, in a communication dated 23 October 1997 which was dispatched to the Government for any comments it might wish to make. As there has not been time for the Government to reply, consideration of this information and of any comments the Government may make on it will be dealt with the next time the Committee examines this file.

19. The Committee notes the information supplied in the Government's report and in the Conference Committee on bonded child labour and other forms of compulsory child labour, which is to be distinguished in the context of the present Convention from the existence of a large number of working children who are not under compulsion in the sense of the Convention. It notes that the Government is receiving assistance from the ILO's International Programme on the Elimination of Child Labour (IPEC) and other donors.

20. The Committee notes that — as for bonded labour in general — there is no generally agreed order of magnitude for the number of children in bondage or in other forms of compulsory labour in India, though some estimates are in the millions. The Committee is considering two situations under this Convention: children who are actually in a situation of debt bondage; and those who are under other forms of compulsion to perform work, particularly the most hazardous forms of work which are performed under situations of constraint. It is not always clear from the information received whether the situations described comprise bonded or other forced child labour, which makes numerical estimates more difficult; but it does not appear to be in doubt that compulsory child labour exists on a large scale in the country.

21. The Committee notes the additional information supplied to the Conference Committee on the implementation of the blueprint for action entitled "Identification, release and rehabilitation of child labour", covering a range of actions to attack the child labour problem especially in hazardous occupations. Noting that no information has been provided on the impact of these activities, the Committee requests the Government to include in its next report an assessment of the activities, the impact they have had in practice, and plans for future action.

22. The Committee has been informed that the Supreme Court of India adopted a decision on 10 December 1996 in the case of M.C. Mehta v. the State of Tamil Nadu, after the Government's report was received. In that decision, the Supreme Court ordered a number of actions relevant to this Convention, including the following:

- simultaneous action in all districts of the country to withdraw children working in hazardous industries and ensure their education in appropriate institutions;
- a survey to identify the children in hazardous industries and a contribution of Rs.20,000 per child to be paid by the offending employers of children in hazardous industries to a welfare fund to be established for the education of children;

- employment to be provided to one adult member of the family of the child that had been withdrawn from work, or alternatively a contribution of Rs.5,000 to be made to the new welfare fund to be established by the state government;
- financial assistance for families of the children withdrawn from work to be paid from the interest earnings on the corpus of Rs.20,000-25,000 deposited in the welfare fund as long as the child in question is attending school.

23. Please provide information in the next report on how this decision is being implemented, as concerns the present Convention, and a copy of the decision.

24. As concerns *protection against sexual exploitation*, the Committee noted previously that all state governments and union territory administrations had been advised to form advisory committees for the eradication of child prostitution and to devise and implement social welfare programmes for their care, protection, treatment, development and rehabilitation. Please indicate whether these advisory committees have been formed, and what form their work has taken so far. The Committee would be grateful to receive any reports that any of them may so far have issued describing their work.

25. The Committee also noted that the state government of Uttar Pradesh was to conduct a survey of the problem of alleged child prostitution. The Committee notes from the report that the survey has been entrusted by the state government to the Tata Institute of Social Sciences, and that it will examine the magnitude of the problem, characteristics of the victims, and existing facilities for rehabilitation of child prostitutes, inter alia. The survey was to be completed within a year, and the results communicated to the ILO. The Committee looks forward to receiving this report, and any other available information on the magnitude of the problem in the country and on actions which have been taken or are contemplated to deal with it.

26. The Committee notes that this problem appears to extend beyond children, and again refers to the 1997 conclusions of the Human Rights Committee of the United Nations, which indicated:

> 31. The Committee deplores the high incidence of child prostitution and trafficking of women and girls into forced prostitution, and it regrets the lack of effective measures to prevent such practices and to protect and rehabilitate the victims. The Committee also regrets that women who have been forced into prostitution are criminalized by the Immoral Trafficking Prevention Act and, further, that article 20 of the Act puts the burden of proof on a woman to prove that she is not a prostitute, which is incompatible with the presumption of innocence. Therefore the Committee recommends that the application of this law to women in the situation described be repealed and that measures be taken to protect and rehabilitate women and children whose rights have been violated in this way.

27. The Committee endorses the conclusion by the United Nations Human Rights Committee, which refers to forced prostitution incompatible with the present Convention, and requests the Government to take measures to repeal the legislation and inform the Committee of the measures taken or envisaged to ensure conformity with the Convention.

28. The Committee considers that comments of employers' and workers' organizations on the application of the Convention would be useful to examine the issues raised in the present observation. The Committee would therefore be grateful if the Government would endeavour to obtain such comments and communicate them with its next report.

Indonesia (ratification: 1950)

The Committee notes the observations on the application of the Convention made in October 1997 by the World Confederation of Labour, including a 1997 report by Anti-Slavery International entitled "Enslaved Peoples in the 1990s", which contains in Chapter Three information on debt bondage and on forced labour on "village development" projects of indigenous *Dayak* villagers in East Kalimantan (Borneo). The Committee also notes that these observations were transmitted to the Government, in November 1997, for any comments it might judge to be appropriate.

The Committee notes the allegations of the trade union that many indigenous and migrant forest communities in Indonesia are being subjected to debt bondage and forced labour as a result of the devastation of the country's forest resources brought about by private sector logging operations and "development" policies espoused by the Indonesian Government and by one of its largest funders, the World Bank.

The trade union's allegations focus on recent events in East Kalimantan, on the island of Borneo, in order to provide a clear understanding of the way in which modern forms of enclosure, dispossession, and pauperism are being carried out in the name of "development".

According to the allegations, a number of indigenous groups, known as *Dayaks*, have traditionally inhabited the forested regions of Kalimantan. After the Second World War when Indonesia gained independence from the Dutch colonial government, increasing numbers of Indonesian (primarily Javanese) police, military officers, school teachers, and other government officials, moved into the interior regions of Kalimantan. Beginning in the 1970s, entire settlements of logging and mining camp workers, as well as government-sponsored Javanese transmigrants, moved into indigenous lands. Faced with threats made by company personnel backed up by armed forces, tribal peoples had little choice but to resettle themselves on remaining portions of their ancestral lands and hunting grounds.

The allegations indicate that, in the mid-to-late 1980s and early 1990s, deforestation and human rights abuses in East Kalimantan escalated sharply. Not only did commercial logging reach unprecedented heights, but government policies ostensibly aimed at bettering the lot of forest communities and ensuring forest conservation, resulting in increasing destruction and dispossession. According to the trade union's allegations, what can be considered modern forms of slavery were observable throughout the region.

In 1990, as a result of the negative impact of logging concessions on local communities, the Indonesian Government required all concessions to undertake the development of a nearby community under what was known as the HPH Bina Desa programme. If a logging concession was not able to implement a village development project successfully, its licence could be revoked by the Government. However, according to the allegations, what commonly happened was that companies coerced and threatened villagers into forming work groups or farmers' groups. The groups were then ordered to carry out uncompensated labour on what was euphemistically called a "participatory" development project, designed by the logging company without regard for the needs or wishes of the community being "developed". Most of these Bina Desa projects were complete failures, and led to additional environmental destruction and social conflict. Nevertheless, as far as the companies were concerned, they served their purpose, allowing them to secure the renewal of their timber licences.

The allegations state that, in addition, the Ministries of Forestry and Transmigration produced a law by joint decree, requiring all logging concessions to develop Industrial

Forest Plantations, known as *Hutan Tanaman Industri* (or HTI). As set forth in the trade union allegations, an HTI is set up by means of land clearing rather than logging.

The allegations state that, with the destruction of their lands and livelihood, the affected indigenous *Dayak* peoples are forced to seek employment as temporary workers without contracts on the very Industrial Forest Plantations (HTIs) which have destroyed their ancestral lands. Plantation wages are usually significantly lower than the cost of living. With the destruction of their agroforestry systems and rice fields, indigenous *Dayaks* are also forced to purchase food instead of growing it. Many HTIs and logging concessions have taken advantage of this fact and have established "company stores" near their base camps. Purchases may be made at the company stores under a voucher system run by company management. Under this system workers are given credit which is based upon the future wages of the *Dayak* labourers, who often find themselves not only dispossessed from their lands but trapped deeply in debt to the very companies which appropriated their lands and forests.

The allegations indicate that, after the World Bank withdrew funding for Indonesia's transmigration programme as a result of a massive international outcry over the environmental destruction and human rights abuses occurring under it, the Indonesian Ministry of Transmigration requested that the forestry sector fund its programmes. As a result, as part of HTI development, transmigrants (usually impoverished farmers from Java) are shipped out to the wastelands which have been created on deforested and bulldozed indigenous territories and assigned to plantation labour.

The allegations state that, due to the inability of "land cleared" regions to support agricultural and silvicultural activities, as well as the unsuitability of the farming techniques practised by transmigrants for the poor soils of Kalimantan, there is a high rate of failure in these transmigration schemes. In this respect it is not just the indigenous *Dayak* communities who are affected. Industrial forest plantation transmigration programmes leave the transmigrant labourers themselves trapped and desperate. Under the transmigration programme, impoverished farmers are provided with a boat ticket from Java to a Kalimantan port. They are then taken miles deep into indigenous territories, where often there are no roads other than rough logging roads. After the failure of their food crops, it is very difficult for the transmigrants to leave the regions where they have been placed. Often there is no choice but to engage in plantation labour at wages lower than the cost of living. In addition to plantation labour, transmigrant men often form work gangs under a contractor who sells their labour to the logging concessions. These logging gangs go into the forest for months at a time scouting for timber. Work gangs also comb the forest for valuable products such as rattan, swifts' nests or fragrant *gaharu* wood. According to the information submitted by the WCL, "the inflated prices of the goods combined with the under-valuing of the forest products brought back by the labour gangs ensure that labourers remain trapped in a cycle of debt and must continually return to the forest in order to collect valuable products so that they are able to pay off the debts they incur on every trip".

According to the allegations, the problem can be illustrated by observing the activities at the PT.K logging concession in East Kalimantan between 1990 and 1994. The logging company PT.K is a branch of one of Indonesia's largest and most well-known forestry conglomerates, considered to be a leader in the industry. The operations of this company, typical of the operations of Indonesian logging concessions throughout the country, have resulted in the destruction of the natural resource base and wider human rights abuses, including the use of forced labour.

The allegations state that, "in order to obtain a renewal of their logging licence, the PT.K company was obliged by law to implement a village development project near its concessions area under the HPH Bina Desa Programme. Local villagers were ordered to form cooperative work groups or farmers' groups to work on development projects designed by the company. When farmers refused, village leaders were bribed and then coerced into helping the company and local police to force villagers to form a work group".

The allegations describe, as another example, a company store set up on a PT.G rubber plantation which had been established on cleared rattan gardens. The company store was set up where labourers could only purchase goods at exorbitant prices using a voucher system. Indigenous workers, having lost their lands and therefore their ability to grow their own food, now use vouchers representing future wages in order to make purchases at the company store. When they make purchases, they are not informed as to the amount of their total debt. The increasing debts are then subtracted from their future wages, turning once independent and relatively well-off farmers into impoverished bonded labourers trapped in an ever-mounting cycle of debt.

The allegations further indicate that the extent to which indigenous peoples as well as transmigrants are vulnerable to debt bondage and forced labour is not widely publicized.

According to the "Indonesia Report on Human Rights Practices for 1996", published by the US Department of State, human rights monitors have expressed concern about the practices of some logging companies that recruit indigenous people for work. The report indicates that, according to Human Rights Watch/Asia, this activity in Irian Jaya has separated these people from their traditional economies. In many cases, these new recruits for development projects are ill-prepared for the modern world, leading to their being forced into debt and then indentured.

The Committee hopes the Government will provide full information on these allegations.

According to the US Department of State report referred to above, there are credible reports of teenage children being forced to work under highly dangerous conditions on fishing platforms off the coast of north-eastern Sumatra. These platforms are miles off shore, with access controlled by the employers, and in many cases the children are virtual prisoners on the platforms and forced to work for up to three months at a time for well below the minimum wage. The report states that, according to knowledgeable sources, hundreds of children may be involved.

The Committee asks the Government to supply complete information in regard to this question.

Kenya (ratification: 1964)

The Committee has noted the information provided by the Government in reply to its earlier comments.

1. Over a number of years the Committee has been referring to sections 13 to 18 of the Chief's Authority Act (Cap. 128) according to which able-bodied male persons between 18 and 45 years of age may be required to perform any work or service in connection with the conservation of natural resources for up to 60 days in any year. On many occasions it expressed the hope that these sections would be either repealed or amended so as to meet the criteria for "minor communal services" which are exempted from the scope of the Convention under *Article 2, paragraph 2(e)*.

The Committee previously noted the Government's intention to repeal or to amend sections 13 to 18 of the Act, as it was recognized that in law the aforementioned sections are not in full conformity with the Convention. The Committee notes that, in its latest report received in September 1996, the Government reaffirms its intention to repeal the Chief's Authority Act and to replace it with the Administrative Officer's Authority Act. The Committee hopes that the new Act will be adopted in the near future and that it will be in conformity with the Convention. It requests the Government to supply a copy of the Administrative Officer's Authority Act, as soon as it is adopted.

2. The Committee has noted the Government's statement in its previous report that the Government is not aware of any cases of forced labour in so far as soil conservation and on-farm tree planting are concerned. It has also noted the provisions governing the Presidential Commission on Soil Conservation and Afforestation, as well as a report on the results achieved by the Commission supplied by the Government.

Liberia (ratification: 1931)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *Penal sanctions for illegal exaction of forced labour.* Referring to its previous comments the Committee recalls that under Article 25 of the Convention, the illegal exaction of forced labour shall be punishable as a penal offence with penalties which should be really adequate and strictly enforced. The Committee trusts that the necessary legislation will be enacted.
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> 2. *Local public works.* In previous observations, the Committee noted that, notwithstanding the repeal in 1962 of provisions for the exaction of forced labour for public works contained in the Revised Laws and Administrative Regulations for Governing the Hinterland, 1949, continued use had been made of such powers for carrying out local development works through self-help projects. The Committee noted that according to the annual report of the Ministry of Local Government, Rural Development and Urban Reconstruction for 1981, 75 per cent of rural development projects visited during a nationwide inspection tour were funded through self-help and it requested the Government to provide a copy of the report on the inspection tour and any similar report.
>
> The Committee hopes that the legislative provisions to be adopted with a view to giving effect to the requirements of *Article 25 of the Convention* will ensure that any exaction of labour in connection with local development works can be the subject of effective penalties.
>
> 3. *Enforcement of the prohibition of forced or compulsory labour.* In previous observations, the Committee pointed out that, under *Articles 24 and 25 of the Convention*, the Government was under an obligation to ensure the strict observance of the prohibition of forced or compulsory labour. It stressed the importance, in this connection, of measures to ensure adequate labour inspection, particularly in non-concessionary agricultural undertakings and in relation to Chiefs. The Committee hopes the next report will contain further information in this respect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Madagascar (ratification: 1960)

1. *Prison labour.* For several years the Committee has drawn the Government's attention to Decree No. 59-121 of 27 October 1959 (amended by Decree No. 63-167 of 6 March 1963) to establish the organization of the prison services, under which prison labour may be hired to private undertakings and prison work may be imposed on persons

detained pending trial. The Committee requested the Government to repeal or to amend the legislation in question so as to bring it into conformity with the Convention.

In the Government's previous reports, the Committee noted with interest the renewed statements to the effect that the hiring of prison labour had been abolished in Circular No. 10-MJ/DIR/CAB/C of 1 July 1970 and that people detained pending trial were no longer forced to undertake prison labour. The Committee also noted the repeated information provided by the Government according to which the revision of Decree No. 59-121 was being studied.

In its last report received in 1996, the Government indicates that the hiring of prison labour is still justified by the general economic recession prevailing in the country, since the administration has only a limited budget available which does not allow it to guarantee the vital minimum (food and shelter) for the prison population. The Government adds that the hiring of prison labour is permitted under section 70 of Decree No. 59-121, provided that the work undertaken is for the good of the country.

The Committee reminds the Government that under *Article 2, paragraph 2(c), of the Convention*, a prisoner shall not be hired or placed at the disposal of private individuals, companies or associations even if they are responsible for carrying out public works. The Committee also refers the Government to the explanations provided in paragraphs 97-101 of its General Survey of 1979 on the abolition of forced labour.

The Committee hopes that the Government will take the necessary measures to bring the legislation into conformity with the Convention, in particular by prohibiting, on the one hand, the hiring of prison labour to private individuals and, on the other hand, the imposition of prison labour on people detained pending trial.

2. *National service.* In its previous comments, the Committee referred to Act No. 68-018 of 6 December 1968 and to Ordinance No. 78-002 of 16 February 1978 relating to the general principles of national service, which define national service as the compulsory participation of all Malagasies in national defence and in the economic and social development of the country. The Committee also noted various texts which either referred to the powers of the military committee for developments with regard to work in support of the local communities or laid down the procedure for incorporation into national service of young school-leavers and recruits of a particular age group, or changed the name of the units responsible for development (development forces), subject to the threat of various penalties and sanctions.

The Committee drew the Government's attention to the fact that under Decree No. 92-353 fixing the conditions for recruitment and methods for enforcing the obligations of national service on school-leavers, the Voluntary Nature Act in question relates not to the performance of national service, but to the sector of assignment (outside the people's armed forces).

Furthermore, the Committee notes that Decree No. 92-353 was adopted pursuant to sections 2 and 4 of Ordinance No. 78-002. Under Act No. 68-018 and Ordinance No. 78-002, national service is defined as the compulsory participation, imposed for a period of up to two years, of part of the population, namely young Malagasies from 18 to 35 years of age, in the activities of national defence and the economic and social development of the country, under the threat of various penalties and sanctions.

The Committee reminds the Government once again that forcing young people to participate in development work as part of compulsory military service — or as an alternative thereto — is incompatible with the Forced Labour Convention. Military service is excluded from the scope of the Convention only if it is confined to "work of a purely military character". In this regard, the Committee refers the Government to the explanations given in paragraphs 25, 27, 28, 29, 31, 32, 49 and 56-61 of its General Survey of 1979 on the abolition of forced labour in which it provides clarifications as to the link between certain compulsory programmes involving the participation of young people in activities for the economic and social development of the country, and the Convention.

The Committee again expresses the hope that the Government will take the necessary measures to bring the legislation into conformity with the Convention, in particular by ensuring that young boys and young girls participate in national service on a voluntary basis and that the services required under the military service laws are of a purely military character.

The Committee notes the information provided by the Government according to which the political and social context has changed considerably since 1978 and consequently, the fact that Ordinance No. 78.002 of 16 February 1978 to introduce national service has lapsed may be invoked. It therefore requests the Government to repeal Ordinance No. 78.002 and Decree No. 92-353 so as to ensure that the Convention is respected.

Mauritania (ratification: 1961)

1. *Abolition of slavery.* The Committee recalls that for some years it has been examining the situation in Mauritania as concerns allegations of slavery, and the condition of former slaves. Slavery has been declared illegal in the country, most recently by the Declaration of 5 July 1980. The Committee recalls that a direct contacts mission to the country in 1992 found that slavery had not yet been completely eradicated; and the Committee continues to receive reports from trade union organizations to the same effect.

2. The Government states in its most recent report that slavery is a practice which disappeared a long time ago. Certain kinds of behaviour or states of mind may persist and they are being combated, though only time can have a positive and definitive effect. The Government has cited its efforts in relation to literacy, land rights and awareness raising, and indicates that no courts have imposed penalties for the exaction of forced labour as neither they nor the national authorities have received any complaints to this effect. Noting that the Government indicates that the Labour Inspectorate is responsible for the implementation of the Convention's requirements, the Government is asked to indicate whether any particular attention has been given by this inspectorate to the situation of former slaves, what the inspectorate's findings may have been, and what corrective measures may have been taken.

3. The Committee recalls in this connection that it has previously pointed out that the Declaration of 5 July 1980 does not contain provisions imposing penal sanctions for the illegal exaction of forced labour, as required by *Article 25 of the Convention*. The Committee has also referred to Circular No. 003 of 9 January 1981, and Circular No. 108 of 8 May 1983, prohibiting judges from taking decisions incompatible with the law, and in particular with the prohibitions of slavery. The Committee requests the Government to indicate what court decisions have been made recently in this connection. It refers in particular to recent cases concerning custody of children in which a magistrate had ruled that a man alleged by the mother to be their former master, was actually their father; and other cases concerning the question of whether the former master or the descendants of former slaves have the right to inherit their property.

4. Please also indicate in the next report what measures may have been taken for the rehabilitation of former slaves and their return to a more normal existence, in the light of reports that many former slaves continue to live with and work for their former masters.

5. The Committee notes that, in a communication dated 23 October 1997, observations on the application of the Convention were made by the World Confederation of Labour, which were sent to the Government on 17 November 1997 for any comments it might wish to make. These observations indicate, inter alia, that many Mauritanians continue to complain of slavery, and that a public debate has opened on the subject for the first time in many years. The Committee looks forward to receiving the Government's comments, and in particular to further information on the debate said to be taking place.

6. *Requisitioning of labour.* In the comments it has been making for some years, the Committee has noted that Ordinance No. 62-101 of 26 April 1962 and Act No. 70-029 of 23 January 1970 confer very wide powers on the authorities to requisition labour outside the cases of emergency admitted by *Article 2, paragraph 2(d),* of the Convention. The Government has stated in earlier reports that it considered it necessary to amend this legislation and to repeal provisions which are not in conformity with the Convention. The Government has stated in its most recent report that these texts have not yet been amended, and states that it will inform the Committee when this has been done. The Committee urges the Government to take the necessary measures in the very near future.

Morocco (ratification: 1957)

1. *Article 2, paragraph 2(a), of the Convention.* The Committee has previously drawn the Government's attention to the civic service established under section 4 of Royal Decree No. 137-66 (institution and organization of military service) and sections 1, 3, 5, 6 and 9 of the Dahir to issue Act No. 1-73-415. Under the provisions mentioned above, all holders of certain higher academic qualifications have to do civic service for a period of two years (section 1). Those subject to civic service are called up by individual order and made available to public administrations on conditions set by decision of the government authorities (section 5). On the basis of section 15, any person found guilty of deliberately avoiding or having tried deliberately to avoid civic service will be punished by imprisonment of from one to three months and a fine of 1,200 to 5,000 dirhams, or one of these sanctions only. These sanctions are applicable to persons liable to civic service who, without a valid reason, have not replied to the summons to appear before the special selection committee or a call-up order from the military authorities.

The Committee notes the Government's indications to the effect that, first, the requests and training of the persons concerned and the needs of the administration are taken into consideration in making recruits available for civic service and, secondly, civic service is considered as a period of training in the public administration received by qualified persons after which they are often, at their request, recruited into the units where they carried out their civic service.

The Committee observes that the voluntary nature of civic service is not clear from the provisions mentioned and that execution of the service is ensured by the threat of imprisonment and/or a fine.

The Committee again asks the Government to take the necessary measures to include in legislation the practice — which the Government states exists already — under which recruits are made available to public administrations only if they so request.

2. *Article 2, paragraph 2(c).* For many years, the Committee has been asking the Government to repeal or amend the Dahir of 26 June 1930 which allows prisoners to be handed over to and employed by private enterprises.

The Committee noted the previous reports in which the Government indicated that this law has not been applied since Morocco gained independence and that a draft reform of the prison system repealing the Dahir of 1930 was in preparation.

The Committee notes the information supplied by the Government in its most recent report to the effect that section 39 of the Bill on penal establishments prohibits the employment of prisoners by private enterprises or in aid of private individuals and the Government's information to the effect that the Consultative Council on Human Rights adopted the Bill after examining its conformity with the international conventions on human rights.

Considering this matter has been subject of comments since 1962, the Committee expresses strongly the hope that the new law will be adopted in the near future, bearing in mind the requirements of the Convention, and that a copy of the text adopted will be supplied.

3. *Article 2, paragraph 2(d).* For many years the Committee has been drawing the Government's attention to a number of legislative texts contrary to the Convention. These are the Dahirs of 10 August 1915 and 25 March 1918, contained in the Dahir of 13 September 1938, as reintroduced by Decree No. 2-63-436 of 6 November 1963, authorizing the calling up of persons and the requisitioning of goods in order to satisfy national needs.

The Committee also noted the comments made by the CDT and UGTM to the effect that these provisions are still in force and were applied in times of strike, and the statement by a government representative in 1992 to the Conference Committee on the Application of Standards that application of the right of requisition is limited in practice to exceptional situations, where the population's life and normal living conditions are at risk. The Committee asked the Government to supply information on the application in practice of the provisions relating to the calling up of persons, including the decrees on requisition and the sanctions imposed for lack of compliance.

The Committee notes that the Government's reports contain no information on these matters.

The Committee expresses strongly the hope that the Government will repeal or amend in the very near future the above-mentioned legislative texts and will supply information on the measures taken or contemplated to ensure that the circumstances allowing the calling up of persons will be limited strictly to situations endangering the existence or well-being of the whole or part of the population.

4. *Article 25.* For several years, the Committee has been pointing out to the Government the absence from the national laws, of penal sanctions on persons guilty of the illegal exaction of forced labour.

Since 1969, the Government has been referring to a draft Labour Code which would satisfy the requirements of the Convention on this matter. In its latest report, the Government indicates that the draft Labour Code in its final version, transmitted to the Chamber of Deputies for adoption, provides that offences against section 39 on the prohibition of forced or compulsory labour shall be punished by a fine of between 3,000 and 5,000 dirhams.

The Committee notes this information but points out that *Article 25 of the Convention* lays down that the illegal exaction of forced or compulsory labour shall be subject to really adequate and strictly enforced penal sanctions.

The Committee therefore expresses the hope that the Labour Code which will be adopted shortly will also ensure compliance with the Convention on this matter and that the text of the new law will be supplied.

5. *Freedom of public servants and career members of the armed forces to terminate their employment.* The Committee noted that under section 77 of the Dahir of 24 February 1958 establishing the General Conditions of Employment of the Public Service, the resignation of an official does not come into effect unless it is accepted by the authority within whose competence the power of appointment lies and that, in the event of refusal, the person concerned may place the case before the Joint Administrative Committee which issues a reasoned opinion for transmission to the competent authority.

The Committee requests the Government to indicate in its next report whether the provisions of sections 77 and 78 of the Dahir of 24 February 1958 are still in force and, if so, to specify the criteria applied by the competent authorities in accepting or rejecting a resignation request and by the Joint Administrative Committee in support of its opinion.

The Committee recalls its request for information regarding the situation of various categories of persons in the service of the State, particularly with reference to their freedom to leave the service on their own initiative, after a reasonable time, either at specified intervals or by giving notice. The Committee notes that the latest report contains no information on this matter.

Furthermore, the Committee requests the Government to supply the text of the provisions applicable to the resignation of career members of the armed forces.

The Committee is addressing a direct request to the Government on another point.

Panama (ratification: 1966)

The Committee recalls that under provisions of the Administrative Code (sections 873, 878, 882, 884 and 887) and Act No. 112 of 1974, police chiefs are empowered as administrative authorities to impose sentences, including labour on public works and detention. As has been pointed out on many occasions, this is not in accordance with *Article 2, paragraph 2(c) of the Convention*, under which work can be exacted only as a consequence of a conviction in a court of law, so that the imposition of compulsory labour by administrative authorities is not compatible with the Convention.

The question was discussed in the Conference Committee on the Application of Standards in 1995, and that Committee noted with regret that the draft had not been adopted, though the Government had been referring to draft legislation before the Legislative Assembly for more than ten years.

In its report received in May 1997, the Government has once again indicated that legislation for this purpose is still pending. It states that the Executive Authority, in a session of the Cabinet Council (Consejo de Gabinete) on 26 May 1997, approved Bill No. 22 to repeal and amend certain provisions of the Administrative Code in order to bring it into line with Convention No. 29; and that the Bill has now been submitted to the Legislative Assembly for final approval.

The Committee once again expresses the hope that the legislation will be adopted in the near future, in order to bring this legislation into line with the Convention.

Sierra Leone (ratification: 1961)

In its comments made for a number of years, the Committee asked the Government to repeal or amend section 8(h) of the Chiefdom Councils Act (Cap. 61) under which compulsory cultivation may be imposed on natives. The Committee previously noted the Government's statement that the above-mentioned section is not in conformity with article 9 of the Constitution and would be held unenforceable. The Committee also noted the Government's indication that section 8(h) was not applied in practice and that information on any amendment of this section would be provided. In its latest report (1995) the Government stated that measures to change section 8(h) are evident in the new proposed Constitution.

The Committee therefore trusts that measures will be taken in the near future in order to bring section 8(h) of the Chiefdom Councils Act into conformity with the Convention and the indicated practice. It asks the Government to provide, in its next report, information on any progress made in this regard.

Sudan (ratification: 1957)

1. The Committee notes the discussion which took place in the Conference Committee in June 1997, and that the Conference Committee decided to include this case in a special paragraph in its report, and to mention it as a case of continued failure to implement a ratified Convention. The Committee also notes the detailed report which the Government has submitted following this discussion. The Committee notes in addition the Report on the Situation of Human Rights in Sudan, submitted by the Special Rapporteur on the situation in Sudan to the Commission on Human Rights at its 53rd Session (March 1997, UN document E/CN.4/1997/58), and resolution 1997/59 adopted by the Commission at that session. Finally, the Committee notes that a communication was received from the World Confederation of Labour (WCL) on 23 October 1997, and sent to the Government on 17 November 1997 for any comments it might wish to make. (This supplements the 1996 WCL comments referred to in the previous observation, a reply to which was included in the Government's report.)

Information before the Committee

2. The Committee has been referring for several years to allegations of the continued existence of slavery and slave-like practices, both in the areas under government control and in areas in the south of the country where an armed conflict is under way. Based on the information supplied by the UN Special Rapporteur, and on a great deal of independently generated information which has been forwarded by the WCL and discussed in the Commission on Human Rights and its subsidiary bodies, the Committee referred in its previous observation to "long-standing accusations of widespread illegal imposition of forced labour, tolerated or encouraged by the Government (which) have been made by the Special Rapporteur and flatly rejected by the Government". The Committee stated that it was "deeply concerned that the Government has not lived up to its renewed undertaking to "make all possible efforts to stop forced labour practices whenever it is established that they exist".

3. The information before the Committee includes detailed allegations that the Popular Defence Forces (PDF) which are allied with the Government, have conducted abductions and engaged in trafficking of women and children, in the context of the civil war in the southern part of the country; the allegations indicate that these actions are sometimes also taken by officers of the government forces. There are allegations of sexual

abuse against women and child slaves. The Government itself indicates in its most recent report, as it has previously, that there are large-scale abductions carried out by the rebel forces over which it has no control, and the forcible abductions of these children into their armed forces or compulsion to act as porters for the ammunition and supplies of the rebels (see below). These allegations are placed in a general context in which, as the UN Special Rapporteur has stated, "the whole range of human rights recognized by the United Nations has continuously been violated by agents of the Government of Sudan or individuals publicly affiliated and working with it" and that "Members of different parties to the conflict in southern Sudan and the Nuba Mountains, other than the Government of Sudan and those affiliated with it, have committed a series of abuses and atrocities against the life, liberty and personal security of Sudanese citizens in the areas under their control."

4. The report "Slavery in Sudan" published by Anti-Slavery International (May 1997) and communicated by the WCL, states that the main takers of slaves are government-armed militias from the Rezigat and Mesriya people from the neighbouring regions of Kordofan and Darfur and that other members of the PDF and some regular army officers are involved. It states that typically slaves are captured in raids by these forces on villages, and the captured slaves are then sold or bartered to smallholders who typically keep only a few slaves. It is stated that several thousand slaves are held in this fashion, but specifies that it has no indications that there is a large organized market for slaves.

The Government's report

5. The Government states in its most recent report, supplementing its communication to the Conference Committee, that a Special Investigating Commission was established by the Ministry of Justice by an Order of 4 February 1996 to investigate cases of forced and involuntary disappearance, which it states amount to 249 cases. On 5 March 1996, Decree No. 2 expanded its mandate so as to conduct investigations on cases of slavery, servitude, slave trade and similar practices; and on 21 May 1996 Decree No. 3 extended its composition to include non-governmental delegates and to entrust its presidency to the President of the Sudanese Body for Human Rights, an NGO. The report, received in September 1997, provides details of three field inspections carried out between July 1996 and January 1997, lasting from four to ten days each. The Commission also employed other methods to gather information, including advertising its availability to receive information and soliciting information from citizens. The Government states that the Commission made the following findings:

(a) *Nuba mountain area*: allegations of slavery and slave trading, including employing Nubian children as domestic servants of officers, and employing Nubian slaves in farms owned by those close to the Government. The Commission obtained no information which confirmed the existence of any such practices. Where there are Nubian servants, all are said to be registered employees and receive salaries. There was no information on any state or private farms in which Nubians are forced to work.

(b) *Bahr el Djebel and Jungali governorate*: allegations of abduction of a large number of children by forces allied to the Government from villages near the Babunasa-Wau railway in 1993, and the transfer of 27 students from this area to the El Gezira governorate in May 1996. The Commission found that the students had been transferred voluntarily for educational purposes, with the consent of their parents and under the supervision of the authorities. As for the allegations of abducted children, the Commission received no complaints from citizens, and received testimony that refuted the allegations.

6. The Government states that the problems which do occur are not related to slavery as such but rather, as it has indicated previously, result from disputes between the nomadic tribes in western Sudan and southern Kordofan, and more precisely between them and the Dinka tribe in Bahr Al-Gazal, over grazing land and water resources. It has previously indicated that there are, in such cases, instances of hostage-taking in local conflicts which do not constitute slavery. It adds that rebel groups are responsible for the disappearance of children because they abduct them and force them to join the rebel army, and sometimes children disappear temporarily because they are forced to transport the ammunition of rebel groups. The Government states that while this is not its responsibility because these areas are outside its control, it has taken many initiatives to end the civil war, and in April 1997 signed a peace treaty with some of the tribes concerned, which contains various human rights guarantees.

The Committee's comments

7. The Committee notes the information supplied by the Government, and the information received from the WCL and otherwise on the kinds of forced labour and slavery practised in the country. It notes also that the Government has requested the technical assistance of the Office, following the suggestion to that effect made by the Conference Committee in June 1997, but that the assistance requested was the provision of vehicles to assist the Investigating Commission; the Office replied that other forms of assistance were envisaged, but that the kind of help requested would not be excluded in the context of a broader agreement for assistance.

8. The Committee is concerned to note the serious contradictions between the findings of the UN Special Rapporteur, several reputable non-governmental organizations, supported by submissions from the World Confederation of Labour, and the Government's own findings through the Special Investigating Commission. The finding that there are no problems of forced or compulsory labour anywhere in the part of the country controlled by the Government, is profoundly inconsistent with the other sources of information available. The Committee recalls the long-standing allegations of widespread illegal imposition of forced labour, tolerated or encouraged by the Government. It therefore encourages the Government to renew its investigations of the allegations made, and to provide detailed information on its findings in the next report. The Committee again requests the Government to take effective action to secure the observance of the Convention and to report on the concrete measures adopted, including information on any cases brought to justice, the number of convictions made and the penalties imposed.

9. As concerns instances of forced labour in the areas outside the Government's effective control, the Committee notes the information supplied concerning efforts to arrive at a peaceful settlement of the present civil war. It hopes that this will shortly come about, and that immediate and effective measures will also be taken in those areas as soon as the Government is able to do so, to apply its obligations under the present Convention.

Thailand (ratification: 1969)

The Committee notes the Government's 1996 report, which was received too late to be examined at its previous session. It also notes other available information relating to the implementation of the ILO's International Programme on the Elimination of Child Labour (IPEC), with which the Government has been working for several years and with which it has recently renewed its Memorandum of Understanding.

The Committee's previous comments have focused on the problems of the exploitation of forced child labour, in the form of child pornography and prostitution, as well as in factories, sweatshops and other workplaces. They have discussed the attendant problems of labour inspection, enforcement of criminal and labour legislation, and the adequacy of sanctions applied against employers for infringement of the legislation, as well as the need for an expanded educational system. The Committee has repeatedly emphasized that forced child labour is one of the worst forms of forced labour, and that it must be fought energetically and punished severely. It has stressed the importance of concrete and effective action to deal with this problem, which is of very large proportion in Thailand.

Legislation and policy

The Committee notes with interest the positive steps taken by the Government, some of them in cooperation with IPEC and with other international institutions, to adopt legislation and to put into place a coherent national policy framework for dealing with the question. While few concrete results are yet visible, it encourages the Government to continue along this path and to take effective action to implement the policies it adopts. A number of questions arise from the information available.

The Committee welcomes the adoption in late 1996, after the report was received, of the Prostitution Prevention and Suppression Act. This Act stipulates punishment for those who procure or deceive a person to commit prostitution inside or outside the Kingdom with more severe penalties when the offence concerns persons under 15 years, or over the age of 15 but not over the age of 18 years (section 9). Parents or guardians who know or should have known that their ward is procured for prostitution are subject to penalties (section 10), and measures are provided to revoke guardianship for anyone who conspires to make a young person subject to prostitution (section 13). The Committee notes that a Committee for Protection and Vocational Development is to be set up at the central and provincial levels to enforce the Act, and that this Committee has taken various steps to coordinate various agencies including the police, prosecutors, courts and public welfare officials. The Government has also taken steps to make this legislation known to the public.

The Committee requests the Government to provide detailed information in its next report on the practical steps taken to apply each of the provisions of this legislation (as this clearly involves forced prostitution of children), and to indicate the concrete results achieved including the number of prosecutions and the sanctions imposed.

The Committee notes that the Government has also provided information concerning the proposed Labour Protection Bill which would raise the general age of admission to employment or work beyond the present 13 years. Noting that this Bill has not yet been adopted, the Committee would be grateful if the Government would indicate in its next report what progress has been made in this connection.

The Committee also notes that the Eighth National Economic and Social Development Plan of Thailand (1997-2001) covers the situation of children in especially difficult circumstances and mentions 12 indicators of development and improvement. These include several points relevant to the Convention, including the need to increase penalties on those abusing child labour.

Enforcement of laws

(a) *Inspection*. The Committee has noted frequently the need for the labour inspectorate and the police to enforce legislation against compulsory child labour. It notes that IPEC has been providing assistance for the training of labour inspectors and police officers as concerns forced child labour. According to the information in the report, during 1995 inspections were carried out in 49,623 of the total 291,931 enterprises in the country, of which 373 were found guilty of employing child labour. This covered 2,264,364 persons, of whom 12 were below 13 years old, 1,322 were between 13 and 15 years, and 5,252 were between 15 and 18 years old. This shows an increase of some 14,000 inspections over the previous period, but a decrease of 95 per cent of the number of children under 13 years discovered working compared with the previous period.

The Government has not provided the information requested by the Committee in its previous observation on the kinds of establishments inspected. There is still no indication of the number and kinds of cases handled by the police (who can deal with cases outside the legal mandate of the labour inspectorate), and the Government restricts itself in this regard to noting that the Crime Suppression Division has established a Coordinating Centre for the Prevention and Suppression of Child Prostitution and Child Labour. The Committee requests the Government to supply this information in its next report. It must also point out that all available information indicates that the amount of forced child labour in undertakings subject either to labour inspection or to police action remains very large, and asks the Government to indicate the measures it may have taken to target those undertakings where forced child labour is most likely to appear.

The Committee recalls that it had suggested in earlier comments that the Government consider assigning women police officers to investigations involving women and children. It welcomes the statement in the report that this has now been done under Police Department Order No. 514/2537 of 13 May 1994.

(b) *Prosecution*. The Committee has previously expressed serious concern about the lack of information on prosecutions, convictions and sanctions related to child labour. In its report the Government indicates the global number of prosecutions in cases involving children under 18, but in the more detailed statistics provided it is clear that no prosecutions were undertaken during the only period covered (July-October 1995) involving any offence for child prostitution or pornography, or other child labour exploitation. Recalling that the Government's own figures put the number of child prostitutes at between 20,000 and 40,000, though many estimates are higher, the Committee expresses strongly the hope that effective measures will be taken in this regard and that information on them will be included in the next report.

(c) *Penalties*. The Committee has previously expressed concern also that the penalties laid down in law for various violations of the national legislation under the Convention, and the way they are applied, did not appear to be in conformity with the Convention's requirement under *Article 25* that the illegal exaction of forced or compulsory labour be punished as a penal offence, and that penalties be adequate and strictly enforced. The Committee notes the Government's indication in its report that various penalties have been reinforced, as well as its explanations of the way in which they may be applied.

As concerns the power to impose *fines in lieu of prosecution*, the Committee notes the Government's explanations that this power is used in child labour cases to speed up the handling of cases and to provide some monetary compensation for the victims. There is no indication in the report of the manner and frequency with which this power is used, its deterrent effect or the amount of compensation paid to victims, and the Committee requests the Government to provide information in this respect in its next report. It reiterates its concern about the conformity of this use of monetary penalties with the requirement for penal sanctions.

More generally, the Committee expresses concern that, regardless of the theoretical kind and level of penalties provided for in the law, there is little indication in the report of their actually being used to deter and punish forced child labour.

Preventive measures

(a) *Community awareness raising*. The Government has provided a good deal of information on the efforts undertaken to warn children and communities to beware of attempts to deceive and abduct children for forced labour, and to publicize agencies which provide assistance, especially in the north-eastern region of the country. It has also indicated measures to coordinate action among various governmental entities, and between them and the non-governmental community working on this problem, including trade unions. The Committee notes that much of this work has been conducted in cooperation with IPEC, and encourages the Government to continue along this path and to provide information on the efforts undertaken.

(b) *Education*. The Committee notes that the objective of the Government remains to extend compulsory education to nine years from its present level of six years, in order to eliminate one of the primary contributing factors to child labour, including forced child labour. It also notes various steps taken to increase the availability of educational facilities beyond the compulsory level, including setting up institutions and providing scholarships. The Committee encourages the Government to proceed as quickly as possible along this path. In the meantime, it would appreciate the Government furnishing in its next report an indication of the number and proportion of children actually in school at different ages, and of the progress achieved in increasing this number over several years.

United Kingdom (ratification: 1931)

1. Further to its earlier comments concerning the privatization of prisons and work performed by prisoners, the Committee notes the information supplied by the Government in its report for the period 1 July 1993 to 31 May 1996, received too late to be examined at its previous session. It also notes the comments made by the Trades Union Congress (TUC) in a communication received 31 October 1996 on the position of domestic working people from other countries working in the homes in Britain of employers from abroad. It furthermore notes a communication received on 19 November 1996 from the TUC on the issue of prison labour being used by private companies, and the Government's observations received 9 December 1996 on that issue.

I. Prisoners working for private companies

A. Requirements of the Convention (Article 2, paragraph 2(c))

2. The Committee recalls that under *Article 2, paragraph 2(c), of the Convention*, work or service exacted from any person as a consequence of a conviction in a court of law is not exempted from the scope of the Convention unless two conditions are met, namely "that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations". Thus, the fact that the prisoner remains at all times under the supervision and control of a public authority does not in itself dispense with fulfilling the second condition, namely, that the person is not "hired to or placed at the disposal of private individuals, companies or associations".

3. On this latter issue, the Committee stressed in earlier comments made under the Convention that the provisions of *Article 2(2)(c)* are not limited to cases where a legal

relationship would come into existence between the prisoner and the private undertaking, but cover equally situations where no such legal relationship exists. The Committee also noted that typically, a prisoner "is hired to" a private company under a contract between the prison service and the company. Thus, the triangular relationship in which the prisoner's labour is the subject of a contract between the prison service and a private company corresponds exactly to what is referred to in *Article 2, paragraph 2(c)*, as incompatible with the Convention, in so far as the prisoner is obliged to work.

4. In its previous observation on the observance of the Convention in the United Kingdom, the Committee recalled that, as indicated in paragraph 98 of its 1979 General Survey on the abolition of forced labour, the provisions of the 1930 Convention which prohibit convict labour from being hired to or placed at the disposal of private individuals, companies or associations are not limited to work outside penitentiary establishments but apply equally to workshops which may be operated by private undertakings inside prisons, and that, *a fortiori*, the prohibition covers all work organized by privately run prisons.

5. In paragraph 97 of its 1979 General Survey on the abolition of forced labour, the Committee noted that in certain countries certain prisoners may, particularly during the period preceding their release, voluntarily accept employment with private employers, subject to guarantees as to the payment of normal wages and social security, consent of trade unions, etc. In this connection, the Committee notes the Government's indication in its observations received on 9 December 1996 that "on the very rare occasions when a prisoner does work directly for an outside employer (which may happen for a period when a long-term prisoner is undergoing preparation for release, for example), he or she does so voluntarily". The Committee has considered that, provided the necessary safeguards exist to ensure that the persons concerned offer themselves voluntarily without being subjected to pressure or the menace of any penalty, such employment does not fall within the scope of the Convention.

6. As the Committee has repeatedly pointed out, only when performed in conditions of a free employment relationship can work for private companies be held compatible with the explicit prohibition in *Article 2(2)(c)*; this necessarily requires the formal consent of the person concerned and, in the light of the circumstances of that consent, there must be further guarantees and safeguards covering the essential elements of a labour relation, including a level of wages and social security corresponding to a free labour relationship, to remove the employment from the scope of *Article 2(2)(c)* which unconditionally prohibits that persons who are under an obligation to perform prison labour be hired to or placed at the disposal of private companies.

B. State of national law and practice

7. The Committee notes that several changes have been made in recent years in the national laws and regulations dealing with prisons and prison labour, as well as in actual practice, and that no measures were taken on these occasions to take into account the requirements of the Convention.

(a) Contracted-out prisons and prison industries

8. In previous comments the Committee referred to section 84 of the Criminal Justice Act 1991, under which the Secretary of State could enter into a contract with a private contractor for the running by him of any prison which: (a) was established after the commencement of that section, and (b) was for the confinement of remand prisoners. These two restrictions were removed by statutory orders in 1992 and 1993, and the Committee noted that at Blakenhurst prison (which had been contracted out as from 26

May 1993 to the "UK Detention Service", a joint venture of "Mowlen Alpina" and "Corrections Corporations of America"), the contract with the private operators provided that convicted and sentenced prisoners would be required to participate in work and vocational programmes, while remand prisoners were able to participate if they so wished, and were encouraged to do so.

9. The Committee notes that section 84 of the 1991 Act was amended by section 96 of the Criminal Justice and Public Order Act 1994. Section 84(1) of the Criminal Justice Act 1991 now reads:

> The Secretary of State may enter into a contract with another person for the provision or running (or the provision and running) by him, or (if the contract so provides), for the running by subcontractors of his, or any prison or part of a prison.

Section 84(4) as amended specifies that:

> In this Part — 'contracted-out prison' means a prison or part of a prison for the running of which a contract under this section is for the time being in force; 'the contractor', in relation to a contracted-out prison, means the person who has contracted with the Secretary of State for the running of it; and 'subcontractor', in relation to a contracted-out prison, means a person who has contracted with the contractor for the running of it or any part of it.

10. The Committee notes that under section 85(1) of the Criminal Justice Act 1991:

> Instead of a governor, every contracted-out prison shall have — (a) a director, who shall be a prisoner custody officer appointed by the contractor and specially approved for the purposes of this section by the Secretary of State; and (b) a controller, who shall be a Crown servant appointed by the Secretary of State; ...

The respective functions of the director and the controller are set out in sections 85(2) and (4) and 87 of the same Act, with consequential modifications of the Prisons Act 1952.

11. According to section 85(2) read together with section 87 of the 1991 Act, most of the functions that the Prisons Act 1952 confers upon the Governor of a prison, shall, in a contracted-out prison, be exercised by the director: thus, section 13(1) of the Prisons Act 1952 provides that "Every prisoner shall be deemed to be in the legal custody of the governor of the prison ...", and under subsection (2), "A prisoner shall be deemed to be in legal custody while he is confined in, or is being taken to or from, any prison and while he is working ...". Section 87(4) of the Criminal Justice Act 1991 provides that in relation to a contracted-out prison, the above reference to "the governor" in section 13(1) of the Prisons Act 1952 shall be construed as a reference to "the director" (who is appointed by the contractor).

12. According to section 85(4) of the 1991 Act:

> The controller shall have such functions as may be conferred on him by prison rules and shall be under a duty — (a) to keep under review, and report to the Secretary of State on, the running of the prison by or on behalf of the director; and (b) to investigate, and report to the Secretary of State on, any allegations made against prisoner custody officers performing custodial duties at the prison.

13. Under section 85(5) of the 1991 Act, as amended by section 101(1) of the Criminal Justice and Public Order Act 1994:

> The contractor and any subcontractor of his shall each be under a duty to do all that he reasonably can (whether by giving directions to the officers of the prison or otherwise) to facilitate the exercise by the controller of all such functions as are mentioned in or conferred by subsection (4) above.

14. The Committee notes the Government's indication in its report that the contract entered into by the Secretary of State and the contractor spells out the contractor's

obligations in detail, and that the supervision and control of the Home Secretary is exercised through the director (appointed by the contractor and specially approved by the Secretary of State) and the controller (a Crown servant appointed by the Secretary of State, together with the Board of Visitors and Her Majesty's Chief Inspector of prisons). The Government explains that:

> While one of the roles of a controller of a contracted-out prison is to inquire and adjudicate on disciplinary charges brought against prisoners, the role is not limited to this function. The duty of the controller under section 85(4) of the Criminal Justice Act 1991 is to keep under review, and report to the Secretary of State on, the running of the prison and to investigate, and report to the Secretary of State on, any allegations made against prisoner custody officers. Section 88 of the Act provides for the intervention of the Secretary of State in the event of the director losing effective control of the prison.

The Government concludes that "the Secretary of State thus retains considerable supervisory functions and a high degree of state superintendence continues to exist at contracted-out prisons".

(b) Compulsory nature of labour to be performed by convicted prisoners in any prison

15. The Committee notes that under rule 28(1) of the Prison Rules 1964 (S.I. 1964/388) "A convicted prisoner shall be required to do useful work for not more than ten hours a day, and arrangements shall be made to allow prisoners to work, where possible, outside the cells and in association with one another." Under paragraph (5) of the same rule "An unconvicted prisoner shall be permitted, if he wishes, to work as if he were a convicted prisoner."

16. The Committee notes that these provisions apply throughout every prison, be it administered by the State or (entirely or partly) run by private contractors under a contract entered into by the Secretary of State under section 84 of the Criminal Justice Act 1991, as amended by section 96 of the Criminal Justice and Public Order Act 1994.

17. The Committee moreover notes that under rule 4(1) of the Prison Rules 1964, as amended by the Prison (Amendment) (No. 2) Rules 1995, "There shall be established at every prison systems of privileges approved by the Secretary of State and appropriate to the classes of prisoners there, which shall include arrangements under which money earned by prisoners in prison may be spent by them within the prison". Under paragraph (3) of the same rule "Systems of privileges under paragraph (1) may include arrangements under which privileges may be granted to prisoners only in so far as they have met, and for so long as they continue to meet, specified standards in their behaviour and their performance in work or other activities".

18. The Committee recalls that, as indicated in paragraph 21 of its 1979 General Survey on the abolition of forced labour, it was made clear during the consideration of the draft instrument by the Conference that the "penalty" referred to in *Article 2(1) of the Convention* need not be in the form of penal sanctions, but might take the form also of a loss of rights or privileges.

19. Thus, prison labour is compulsory within the meaning of the Convention under both rule 28(1) and the arrangements referred to in rule 4(3) of the Prison Rules 1964, as amended.

20. *Wages*. The Committee has noted the information supplied concerning prisoners' pay in prisons contracted out to private companies. In its report, the Government indicates that "The prison service continues to examine ways of providing more direct private sector involvement in prisoners' employment which offer prisoners

engaged in such activity the opportunity to receive significantly increased earnings." The Committee notes from the Report on HM prison Blakenhurst by HM Chief Inspector of Prisons, published October 1994, that "Pay rates across the board averaged £8 a week but in the workshops, where piece rates or a sessional rate applied, inmates could expect to earn between £15 and £17 a week. There were even higher pay rates for a number of the inmates employed in the kitchen." According to the TUC comments received 19 November 1996, the Government's statistics for the same prison "show that the highest total weekly wage, including bonuses, is £14.50 for canteen orderlies, the lowest £10 for those working in the gym, gardens, as painters, or on maintenance". As a basis for comparison, the Committee also notes from "Britain 1996", an official handbook prepared by the Central Office of Information, average weekly earnings of £272 for manual employees and £372 for non-manual employees in the country.

C. *Comments by the TUC*

21. In its communication received on 19 November 1996, the TUC stresses that while work opportunities for prisoners are central to rehabilitation, work by prisoners should be performed within the framework set by the Convention. The TUC remains of the view that the Convention forbids the use of prison labour by private companies — except where the following conditions are met:

- the contractual relationship must be between the company and the prisoner, not the company and the prison;
- the prisoner's consent must be genuine and freely given — which in turn requires guarantees with respect to wages;
- the employer must pay social insurance contributions as for other workers;
- the prisoner's consent to take up or continue such work must not be the result of threats of punitive sanctions such as loss of remission;
- labour law and labour inspection regulations must apply.

22. The TUC further indicates that:

> The day-to-day running of prisons is managed by private companies. The Secretary of State has made it clear on numerous occasions, following disturbances in prisons or escapes by prisoners, that he is not responsible for the day-to-day running of prisons, whether public or private. Convicted prisoners may be required to work in British law. Directors of privately run prisons are appointed by the (private) contractor and approved by the Secretary of State but all activity undertaken by prisoners cannot be under the supervision or control of a minister. The right of the controller of a contracted-out prison, who is appointed by the Secretary of State, to intervene if a director loses control of a prison does not amount to effective state supervision of the work of prisoners in such prisons.

23. According to the TUC:

> It is incorrect to state that prisoners are not being placed at the disposal of private companies. Even if the work processes were being supervised by prison officers employed by the public prison service as opposed to private security guards in contracted-out prisons, where prisoners are producing goods for private companies to sell on the market, their labour is clearly at the disposal of such companies. ILO jurisprudence has been clear that, amongst the criteria applied to determine whether prison labour for private companies falls within the terms of the Convention, is the criterion that any employment relationship must be between the individual prisoner and the company and freely entered into. The prisoner may not be contracted to work for the private company by the prison.

24. Finally, the TUC considers that:

> The information supplied by the Government about the pay of prisoners indicates clearly that they are not being paid the rate for the job, even when they are performing work for the

> benefit of private companies or for the private contractors running a prison. [...] The TUC opposes the exploitation of cheap prison labour by private companies and the undercutting of the normal wages of law-abiding working people outside prisons or the replacement of their jobs by cheap prison labour. It leads to exploitation and to unfair competition. The practice should be ended in the TUC's view.

D. The Government's reply

25. The Committee notes from the communications received on 9 December 1996 that:

> The Government has noted the TUC's comments on its latest report on the application of this Convention and, in particular, on the question of prisoners being engaged in work for private companies. The Government has considered the TUC's view that the employment relationship must be between the prisoner and the employer rather than the prison and the employer but understands that this would only apply where the prisoner is placed compulsorily at the disposal of private individuals, companies or associations.

In the Government's view:

> Such a situation, however, never arises in the UK, even where the prison is operated by a private contractor. This is because, when prison work is provided by private companies, the contract is between the prison service and the company. The prisoner's relationship is not with the private company but with the prison. All work in prisons in the UK is undertaken under the supervision and control of a public authority. Prisons operated by private companies under contract to the prison service are supervised by on-site public servants — the controllers — and they are subject to other forms of public control and supervision as well.

The Government concludes that "the work is therefore exempt from the definition of forced labour by virtue of Article 2(2)(c) of the Convention".

26. The Government furthermore indicates that:

> The Prisoners' Earnings Act, which applies to prisoners earning "enhanced wages" under the enhanced wages schemes, makes one of the definitions of such a scheme that the prisoner should volunteer for it. The prisoner cannot be required to participate in it.

E. The Committee's conclusions

27. The Committee has taken due note of the conflicting views of the Government and the TUC as to the degree of supervision and control of the public authorities over work performed in prisons and parts of prisons that are contracted out to private companies, run by staff appointed by the latter and sometimes subcontracted by them to other private individuals or companies. The Committee observes that, as indicated in paragraphs 2 and 3 above, even the existence of effective public supervision and control would not dispense with fulfilling the separate condition in *Article 2(2)(c) of the Convention* that prisoners be not "hired to or placed at the disposal of" private individuals, companies or associations. The supervisory functions retained by the Secretary of State, to which the Government has referred, are to ensure compliance by the private contractor with the terms of the contract entered into, that is, a contract that is in itself in contradiction with the requirements of the Convention, in so far as compulsory prison labour is used by the private contractor or his subcontractor.

28. As regards the "enhanced wages" scheme mentioned by the Government, in which the prisoner cannot be required to participate, the Committee notes that this operates within the framework set by rule 28 of the Prison Rules 1964 and does not remove the compulsory nature of prison labour for convicted prisoners.

29. In order to ensure compliance with the Convention, either the provisions allowing for the contracting out of prisons should be repealed, or persons held in these prisons should be given the rights and guarantees referred to in paragraphs 5 and 6 above.

30. *Freely given consent.* The Committee is aware that in contracted-out prisons and prison industries, it appears particularly difficult to create the conditions of an employment relationship based upon freely given consent. This would require in the first place the repeal of, or an exemption from, the obligation to work laid down in rules 28(1) and 4(3) of the Prison Rules 1964, referred to above. But even if the director of a contracted-out prison, appointed by the private contractor, had no more right to compel a prisoner to work, he or she and the company behind him or her would still have an interest in having the prisoner's labour at their disposal. The Committee recalls that, as mentioned above, the "menace of a penalty" referred to in *Article 2(1) of the Convention* might take the form of a loss of rights or privileges. Since the director running the prison on behalf of a private contractor also has legal custody of the prisoner, it would appear both indispensable and very difficult to ensure that the prisoner's willingness or not to work for the private contractor or its subcontractor had no bearing whatsoever on his conditions of imprisonment and expectation of remission of sentence or early release.

31. The Committee hopes that the necessary measures will be taken as regards both national law and practice to ensure that any work by prisoners for private companies be performed under the conditions of a freely consented upon employment relationship: absence of any form of constraint flowing from the condition as a convicted prisoner; existence of a labour contract between the prisoner and the private company employing him or her (be it the contractor running the prison or a part of the prison or a subcontractor and or any other private company, and whatever be the work (domestic work, services, employment in industrial workshops); and normal conditions regarding wage levels, social security and safety and health.

32. The Committee hopes that the Government will supply full information on the measures taken to bring national law and practice regarding contracted-out prisons into conformity with the Convention, as well as on any measures taken to ensure that the position of the TUC will be taken into consideration by the authorities when entering into contracts with private companies that involve their using prison labour. The Committee also requests the Government to supply copies of the contracts entered upon with private companies as far as the use of prison labour is concerned.

II. Domestic workers from abroad

33. With regard to the comments by the TUC on the position of domestic working people from other countries working in the homes in Britain of employers from abroad, the Committee is addressing a direct request to the Government.

Venezuela (ratification: 1944)

With reference to its previous comments concerning the provisions of the Act of 1956 relating to vagrants and rogues, which empowered the administrative authorities to order internment in a rehabilitation and labour establishment, an agricultural reformatory colony or a work camp, in order to reform vagrants and rogues or to put them out of harm's way, the Committee notes with satisfaction that in the ruling passed on 14 October 1997, the Supreme Court of Justice declared the Act in question to be null and void since it was unconstitutional.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Antigua and Barbuda, Azerbaijan, Belarus, Chad, Costa Rica, Côte d'Ivoire, Croatia, Czech Republic, Democratic Republic of the Congo, Dominican Republic, Egypt, Ghana, Hungary, India, Indonesia, Islamic Republic of Iran, Ireland, Jordan, Kenya, Kuwait, Kyrgyzstan, Lesotho, Liberia, Libyan Arab Jamahiriya, Mali, Mauritania, Mauritius, Morocco, Panama, Romania, Saudi Arabia, Slovakia, Slovenia, Solomon Islands, Sweden, Syrian Arab Republic, Tajikistan, United Kingdom*.

Convention No. 30: Hours of Work (Commerce and Offices), 1930

Kuwait (ratification: 1961)

1. With reference to its previous observation, the Committee notes with interest the adoption of Ministerial Order No. 104/94 fixing maximum permissible overtime in the private sector at six hours a week and 180 hours a year, in accordance with *Article 7, paragraph 3, of the Convention*. The Committee notes however that this new regulation applies only to workers in private sector enterprises. It recalls that *Article 1 of the Convention* provides that the Convention applies to workers in both private and public establishments, and trusts that similar provisions will shortly be adopted for public sector establishments.

2. The Committee draws the Government's attention to the ambiguous wording of section 1(3) of Order No. 015/94 concerning the prohibition of forced labour in private sector enterprises. The text refers to the Law on labour in the private sector (No. 38/64) on which the Committee commented earlier pointing out that it contained no provisions on maximum permissible monthly or yearly overtime, which could give rise to infringements. Since Order No. 104/94 takes account of these comments, the Committee hopes that the Government will shortly take the necessary steps to remove this ambiguity by referring either to Order No. 104/94 as supplementing the provisions of Law No. 38/64, or to the relevant sections of the forthcoming law on labour in the private sector.

3. The Committee notes the draft revision of Law No. 38/64 as amended by the Committee on Labour Standards and Conventions. It would be grateful if the Government would keep the ILO informed of developments regarding the draft revision and hopes that it will be adopted in the near future. In this connection, the Committee asks the Government to state whether the scope of the new Law will be extended to temporary workers and workers in small enterprises, as was mentioned in the Government's last reply to the Committee's comments.

Convention No. 32: Protection against Accidents (Dockers) (Revised), 1932

Information supplied by *Singapore* in answer to a direct request has been noted by the Committee.

Convention No. 33: Minimum Age (Non-Industrial Employment), 1932

General

The Committee recalls that, under *Article 1, paragraph 3(b), of the Convention*, it is open to the competent authority to exempt domestic work in the family performed by members of that family from the application of the Convention. It wishes to emphasize, however, that this provision does not provide for total exemption of domestic work. The minimum age must be fixed and applied in accordance with the provisions of the Convention in regard to domestic work performed by a person who is not a member of the family in question. The Committee requests governments to supply information on the measures taken to ensure compliance with the minimum age requirement for domestic workers who are not members of the family in which they work.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Benin, Central African Republic, Chad, Congo, Djibouti, Guinea, Madagascar, Mali***.

Convention No. 35: Old-Age Insurance (Industry, etc.), 1933

Argentina (ratification: 1955)

The Committee notes the information provided by the Grouping of Public, State and Private Sector Employees which was sent to the Government in May 1997. The Committee trusts that the Government will provide a detailed report including its observations on the points raised by the workers' organization in question.

Chile (ratification: 1935)

Article 9, paragraph 1, of the Convention (employers' contribution to the financial sources of the insurance scheme); ***Article 9, paragraph 4*** (contribution of the public authorities to the financial resources or benefits of the insurance scheme); ***Article 10, paragraphs 1 and 2*** (administration of the insurance scheme); ***Article 10, paragraph 4*** (participation of the assured persons in the administration of insurance institutions). The Committee notes the information supplied by the Government in its report for the period from July 1994 to June 1996, and the discussion on the application of the Convention which took place in the Conference Committee in June 1995. The Committee notes that the questions it raised in earlier observations following the adoption in 1980 of the *new pensions system* established in Legislative Decree No. 3550 (as amended) are still pending.

The Committee notes that a Government representative informed the Conference Committee that a consultation process would be initiated in the tripartite committee established in accordance with Convention No. 144 in order to adopt, with regard to Conventions Nos. 35, 36, 37 and 38, the necessary decisions to resolve the problems raised by the supervisory bodies.

The Committee recalls that the ILO Governing Body, in a decision adopted at its 265th Session (March 1996), asked States parties to Conventions Nos. 35 to 40 to consider the possibility of ratifying the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), and, as appropriate, to denounce Conventions Nos. 35 to 40. The Governing Body pointed out that there is a close link between proposals for the ratification of the more recent and up-to-date Conventions and proposals that certain obsolete instruments might be denounced. It also noted that the implementation of decisions on standards review policy required member States to undertake tripartite consultations taking account, in particular, of the procedures provided for in the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Tripartite Consultations (International Labour Standards) Recommendation, 1976 (No. 152).

In these circumstances, the Committee hopes that the Government will make the necessary effort to take appropriate measures to give effect to the decision of the Governing Body so that it will be able to remedy the failure to apply Conventions Nos. 35 to 38.

Convention No. 36: Old-Age Insurance (Agriculture), 1933

Chile (ratification: 1935)

See under Convention No. 35.

Convention No. 37: Invalidity Insurance (Industry, etc.), 1933

Chile (ratification: 1935)

See under Convention No. 35.

Convention No. 38: Invalidity Insurance (Agriculture), 1933

Chile (ratification: 1935)

See under Convention No. 35.

Convention No. 42: Workmen's Compensation (Occupational Diseases) (Revised), 1934

Argentina (ratification: 1950)

With reference to its previous comments, the Committee notes the adoption of Act No. 24.557 of 1995 on occupational risks, repealing Act No. 24.028 of 1991 and its implementing regulation. It notes with satisfaction that under section 6 of the 1995 Act, the diseases included in the list of occupational diseases which is formulated and revised annually by the executive authority are considered to be occupational diseases. In this respect, the Committee notes the adoption of Decree No. 658/96 which contains a list of occupational diseases identifying the various risk-producing substances and setting forth for each of them the activities likely to involve exposure to them. The Committee wishes also to draw the Government's attention to certain points which it raises in a request addressed directly to the Government.

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In addition, requests regarding certain points are being addressed directly to the following States: ***Argentina, Honduras***.

Convention No. 44: Unemployment Provision, 1934

Spain (ratification: 1971)

1. The Committee recalls that Act No. 22 of 30 July 1992 respecting urgent measures to promote employment and protect against unemployment and Royal Legislative Decree No. 1/1994 of 20 June approving the consolidated text of the General Social Security Act provide, among other measures, for stricter conditions regarding entitlement to unemployment benefit while amending the rules concerning the duration of the benefits. In this connection, a communication of the General Union of Workers in 1996 stated that many workers were totally deprived of the right to unemployment benefit and others were left with a lower level of social assistance benefit, thereby reducing the protection offered by the scheme. The drop in numbers eligible for benefit meant that by the end of 1995 there were some 2,300,000 unemployed without entitlement to unemployment benefit. According to the data provided by the Government in a report received in September 1996, the total cost of unemployment benefit was in thousand of million pesetas in 1994 2,037.3 and in 1995 (provisional data) 1,680.9.

The Committee notes the indications from the UGT and the statistical data supplied by the Government. Under national legislation, entitlement to a contributory unemployment benefit requires 360 days of contributions over the six years preceding unemployment. *Article 6 of the Convention*, for its part, provides that the right to receive benefit or an allowance may be made conditional upon the completion of a qualifying period involving the payment of a prescribed number of contributions within a prescribed period preceding the claim to benefit or the commencement of the period of unemployment, leaving national legislation to prescribe the duration of said period. In addition, in Paragraph 6 of the Recommendation on unemployment, 1934 (No. 44), it is stated that the qualifying period permitted by the Convention should not exceed 52 weekly contributions during the preceding 24 months. The duration of benefits varies in Spain between 120 and 720 days, on the basis of the period of contributions, which does not seem contrary to the provisions of *Article 11* which lays down that the right to receive benefit or an allowance may be limited in duration to a period which shall not normally be less than 156 working days per year, and shall in no case be less than 78 working days per year.

Nevertheless, the Committee is aware of the serious effects which the legislative provisions adopted in 1992 may have on the categories of workers affected, as stated in the observations of the UGT. Consequently, the Committee hopes that the Government's next report will include information on this matter and also on the efforts made to respond to the concerns such as those raised by the above-mentioned workers' organization.

2. *Article 2, paragraph 2(f)*. In its observation of December 1995, the Committee noted that according to section 3(2)(g) of Act No. 10/1994, social protection of apprentices excludes unemployment benefit. According to the national legislation in force at that time, the contract of apprenticeship could be concluded by persons aged between 16 and 25 years for a period of up to three years. In its report of September 1996, the Government provides statistical information, according to age, of young persons who concluded contracts of apprenticeship and the average duration of such contracts for 1994-95. The Government stresses that not all young workers are excluded from protection but only those workers holding apprenticeship contracts. The Government adds that these workers would probably not have entered the workforce if this type of contract did not exist. The Committee notes the aforesaid information and the fact that the latest legislative reforms (Royal Legislative Decree No. 8/1997, of 16 May, on urgent measures to

improve the labour market and promote permanent employment) has introduced a system of *training contracts* which can be concluded by workers over 16 and under 21 years old who do not benefit from unemployment benefits either. It provides that such contracts are of a maximum duration of two years. The Committee recalls that under *Article 2, paragraph 2(f)*, the Convention allows exceptions in respect of *young workers under a prescribed age*. As indicated in its previous comments, during preparatory work, the word "young" was added to the Convention in order to guarantee that the prescribed age was not excessively high. The Committee once again expresses the hope that the Government will re-examine the matter of ensuring the best possible application of the Convention in relation to the situation of workers who have concluded a training contract. It requests the Government to include in its next report detailed information on the progress and results achieved in this direction.

United Kingdom (ratification: 1936)

In reply to the Committee's previous comments, the Government states in its report that it is currently in the process of examining the issues raised very carefully, but at this stage it is not yet in a position to respond in detail to all of them. The Government assures however that it will provide a full and detailed response on all of the issues following a review of its position in the light of the Committee's comments. The Committee takes note of this statement. It trusts that the Government will not fail to supply a detailed report for examination at its next session containing full information on all the questions raised in its previous observation, to which it would like the Government to refer, including information on the measures taken or contemplated to ensure full application of *Article 10, paragraph 1, and Article 11 of the Convention*. In this context, the Committee notes the entry into force, as from October 1996, of the Jobseekers Act followed by the numerous implementing regulations, the text of which was supplied by the Government with its report on Convention No. 102. In order to be able to examine in detail this legislation, which is of a particularly voluminous and complex nature, the Committee insists that the Government provide detailed information, including statistics, on the impact of the new legislation on the application of each Article of the Convention.

Convention No. 48: Maintenance of Migrants' Pension Rights, 1935

Croatia (ratification: 1991)

The Committee notes the communications, dated 23 April and 12 August 1997, from the Association of Clubs of Military Retirees of the Union of Retirees of Croatia concerning the application of Conventions Nos. 48 and 102, as well as the Government's reply to them. In view of the fact that this reply was received shortly before the opening of the Committee's session, it decided to examine the questions raised as regards the payment of retirement pensions of the members of the former Federal Army (JNA) residing in Croatia at its next session, together with any additional information which the Government may wish to supply in this respect.

Convention No. 50: Recruiting of Indigenous Workers, 1936

Guatemala (ratification: 1989)

The Committee notes the detailed information supplied by the Government in response to its previous comments.

Articles 1, 10 and 16 of the Convention. The Committee notes the information provided by the Government that the Ministry of Labour and Social Security is responsible for leading and coordinating implementation of the project for disseminating workers' rights in the four main Mayan languages, set up by the Association "Mujer Vamos Adelante". Furthermore, on 6 May 1996 the Government of Guatemala and the Guatemalan National Revolutionary Unit signed, as part of the process of signing a sound and lasting peace agreement, the Agreement on Social and Economic Aspects and the Agrarian Situation which establishes, in particular, the undertaking that "for agricultural workers who are still subject to recruitment by agents — i.e. recruitment intermediaries — reforms will be proposed for rapid and flexible recognition in the law of such associations as are able to negotiate such recruitment", and that "urgent attention will be paid to abusive practices affecting rural workers, young people, farmers and day labourers in the process of recruitment by intermediaries ..." for the purpose of protecting agricultural workers almost all of whom are indigenous workers. The implementation of such an agreement will be supervised by the United Nations Secretary-General. Furthermore, the Government states that the ratification by Guatemala of the Indigenous and Tribal Peoples' Convention, 1989 (No. 169), was officially registered on 6 June 1996 and that Ministerial Agreements Nos. 81-96 and 111-96 established the "Unit for the Study, Promotion and Dissemination of Peace Agreements and Convention No. 169" whose attributions include following up the above Agreements and Convention No. 169 within the Ministry of Labour.

The Committee asks the Government to indicate the measures taken to establish in the law recognition of such associations as are able to negotiate the recruitment of agricultural workers, supervision of recruitment and the protection of this category of workers against abusive practices. The Government is also asked to indicate the results of the various actions taken or envisaged under the provisions of the Convention as regards recruiting of indigenous workers by a public officer and as regards combatting all forms of pressure or constraint exerted on these workers.

Article 4(a), (b), and (c), of the Convention. The Committee notes that, according to the Government, there is no guarantee that the measures taken so far prevent chiefs and other indigenous authorities from acting as recruiting agents or exercising any kind of pressure upon workers who are possible recruits or who receive remuneration or other special inducement for assistance in recruiting. However, the Government states that recruited workers are presented to the Labour Inspectorate and that with the strengthening of sub-inspectorates and the appointment in the various regions of inspectors who speak the Mayan language, proper supervision of this situation will be possible. The Ministry of Labour and Social Security is making efforts to this end as part of the plan to decentralize the Ministry, and that the pilot region includes the south western part of the country. Furthermore, with the acquisition of computer equipment with assistance from the Organization of American States (OAS), the Ministry has strengthened the services of inspection of employment in Tecún Umán for the registration and supervision of Guatemalan agricultural workers — almost all of whom are indigenous — who are hired on a temporary basis for the performance of services on the southern coast of the State of Chiapas (Mexico).

The Committee asks the Government to provide information shortly on the results of the improved measures for the registry and supervision of the employment of Guatemalan indigenous agricultural workers, in relation to the application of *(a), (b) and (c) of this Article of the Convention.*

Point V of the report form. The Committee asks the Government to continue to provide information on the practical application of the Convention including, for instance, extracts of official reports on breaches of the relevant law and regulations recorded by labour inspectors.

Convention No. 52: Holidays with Pay, 1936

Myanmar (ratification: 1954)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its previous observations, the Committee noted the Government's indication that the Factories Act (1951), the Shops and Establishments Act (1951) and the Leave and Holidays Act (1951) had been reviewed and redrafted taking into consideration the Committee's comments and that the revised texts were undergoing final review by the Laws Srutiny Central Body. The Government's latest report indicates that the draft labour laws are still under review. The Committee would be grateful if the Government would indicate any more recent developments in this respect. It also hopes that the revised texts will be adopted and transmitted to the Office in the very near future.
>
> Furthermore, the Committee trusts that the adopted texts will ensure the application of the Convention to all undertakings set forth in *Article 1 of the Convention*, particularly those small establishments, shops and offices not currently covered by the legislation, as well as building and public works and road transport undertakings. In this connection, the Committee reiterates to the Government the following points:
>
> *Article 2, paragraph 2.* Every person under 16 years of age should be entitled to an annual holiday with pay of at least 12 working days after one year of continuous service, whereas under section 4(1) of the Leave and Holidays Act workers between 15 and 16 years are only allowed ten days.
>
> *Article 4.* Any agreement to forego or relinquish the right to the minimum annual holiday with pay laid down in the Convention (six working days, or, in the case of persons under 16 years of age, 12 working days) must be void, whereas section 4(3) of the same Act allows agreements to accumulate earned leave.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Ukraine (ratification: 1950)

Referring to its previous comments, the Committee notes the observations made by the Central Trade Union Committee of Geology, Geodesy and Cartography Workers, the Government's reply to these comments and to those previously sent by other trade unions. It notes that the issues raised concern mainly the protection of wages and only incidentally holidays with pay. The Committee therefore refers to its observation under Convention No. 95 on the protection of wages, 1949.

* * *

In addition, a request regarding certain points is being addressed directly to *Libyan Arab Jamahiriya*.

Convention No. 53: Officers' Competency Certificates, 1936

Requests regarding certain points are being addressed directly to the following States: *Brazil, Liberia, Libyan Arab Jamahiriya, Mexico, Peru.*

Convention No. 55: Shipowners' Liability (Sick and Injured Seamen), 1936

Liberia (ratification: 1960)

The Committee notes the information supplied by the Government in its last report. In this connection, it wishes to draw attention to the following points.

Article 1, paragraph 2, of the Convention. In reply to the Committee's previous comments, the Government refers to the provisions of section 51 of the Maritime Law concerning vessels which can be registered under Liberian law. In this regard, the Committee wishes to draw the Government's attention to the fact that its comments concerned section 290-2 of the law, which provides that persons employed on vessels of less than 75 net tons are not covered by the provisions of Chapter 10 of the law relating specifically to the obligations of the shipowner in the event of seafarers' sickness or accident.

Article 2, paragraph 1. The Committee noted that section 336-1 of the Maritime Law provides for payment of the wages, maintenance and medical care of the seaman in cases of sickness or accident while he is off the vessel provided that he is "off the vessel pursuant to an actual mission assigned to him by, or by the authority of, the master". The Committee recalls that under this provision of the Convention the shipowner is liable in all cases of sickness and injury occurring between the date specified in the articles of agreement for reporting for duty and the termination of the engagement.

Article 6, paragraph 2. The Committee noted that, contrary to this provision of the Convention, the approval of the competent authority is not required when a sick or injured seaman has to be repatriated to a port other than the port at which he was engaged, or the port at which the journey commenced, or a port in his own country or the country to which he belongs. Under section 342-1(b) of the Maritime Law, agreement between the seafarer and the master or shipowner suffices. The Government states that if there is agreement between the parties, administrative authorization is not necessary but that, in the event of disagreement, the parties may submit the matter to the Commissioner of Maritime Affairs by virtue of section 359 of the law. The Committee notes this information. It wishes to draw the Government's attention to the need to include provisions in its legislation making it compulsory to seek the approval of the competent authority when the parties agree to a port of repatriation other than those laid down in ***Article 6, paragraph 2(a), (b) or (c) of the Convention***. In fact, the provisions of this Article of the Convention are designed to protect a sick or injured seafarer by preventing the master or the shipowner imposing on him a port of repatriation other than the port at which he was engaged, the home port of the vessel or a port in his own country or the country to which he belongs, without the approval of the competent authority; in the event of disagreement between the parties, an appeal to a conciliation authority is not sufficient in itself.

The Committee hopes that in the near future the Government will adopt the necessary measures to ensure full conformity of its legislation with the provisions of the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Djibouti, Luxembourg, Spain*.

Convention No. 56: Sickness Insurance (Sea), 1936

A request regarding certain points is being addressed directly to *Luxembourg*.

Convention No. 58: Minimum Age (Sea) (Revised), 1936

Liberia (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> Further to its previous comments, the Committee notes with interest that section 326(1) of the Maritime Law has been amended to require 15 years as the minimum age for employment or work on Liberian vessels, registered in accordance with section 51 of the Maritime Law (Title 22 of the Liberian Code of Laws). It further notes that such minimum age is required irrespective of any other provision of Title 22, including section 290(2)(a) which would otherwise have limited the application of Chapter 10 and section 326 (on minimum age) to persons employed on vessels of not less than 75 net tons. It notes however that section 326(3) permits persons under the age of 15, to occasionally take part in the activities on board such vessels under specified conditions. The Committee would be grateful if the Government would indicate how such special employment is limited to children of not less than 14 years of age, taking into account all the conditions specified by *Article 2, paragraph 2, of the Convention*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Grenada, Turkey*.

Convention No. 59: Minimum Age (Industry) (Revised), 1937

A request regarding certain points is being addressed directly to *United Republic of Tanzania*.

Convention No. 60: Minimum Age (Non-Industrial Employment) (Revised), 1937

Paraguay (ratification: 1966)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

The Committee notes the new Labour Code (Act No. 213, promulgated on 29 October 1993), as well as the Minor's Code (Act No. 903 of 18 December 1981).

The Committee notes that the minimum age of 15 years under section 119 of the new Labour Code applies only to the industrial undertakings, while the old provision of this section as amended by Act No. 506 of 1974 used to cover any public or private undertaking. There is no other provision in the new Labour Code or the Minor's Code fixing the minimum age for admission of children to non-industrial undertakings apart from the provision of section 6 of the Minor's Code which prohibits work of children under 12 years old outside their home. The Committee requests the Government to indicate how effect is given to *Article 2 of the Convention* which requires the general prohibition of employment of children under 15 years of age in non-industrial work.

A direct request concerning other points is also being addressed to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to *Paraguay*.

Convention No. 62: Safety Provisions (Building), 1937

A request regarding certain points is being addressed directly to *Democratic Republic of the Congo*.

Convention No. 63: Statistics of Wages and Hours of Work, 1938

Barbados (ratification: 1967)

Further to its previous comments, the Committee notes with interest that an advisory mission of the ILO concerning labour statistics visited Barbados in November 1996, according to the suggestion of the Committee.

The Committee has been making comments concerning *Parts II and IV of the Convention*, asking the Government to make efforts to resume the compilation and publication of statistics of wages and hours of work required under these Parts of the Convention. It requests the Government to continue to provide information on any progress made in this respect, especially following the above-mentioned technical assistance provided by the Office and the participation of officials from Barbados in the Subregional Workshop on the Development of a Wage Statistics Programme for the Caribbean (November 1996).

The Committee also draws the Government's attention, as it did in its general observation of 1988, to Convention No. 160 concerning labour statistics adopted in 1985 and which revised the present Convention. The Committee recalls the "principles of flexibility and gradualism" of Convention No. 160, and would like to invite the Government to give consideration to the possibility of ratifying Convention No. 160.

Convention No. 68: Food and Catering (Ships' Crews), 1946

A request regarding certain points is being addressed directly to *Algeria*.

Convention No. 69: Certification of Ships' Cooks, 1946

Requests regarding certain points are being addressed directly to the following States: *Djibouti, New Zealand, Peru*.

Information supplied by the *Netherlands* and the *United Kingdom* in answer to a direct request has been noted by the Committee.

Convention No. 71: Seafarers' Pensions, 1946

Peru (ratification: 1962)

The Committee notes the Government's reply concerning the observations made by the union of Crew Members of Maritime Vessels for the Protection of Workers stating, amongst other things, that the Board of Liquidators of the Peruvian Steamship Company (a limited liability company under liquidation) failed to comply with the requirements of Legislative Decree No. 20530 of 1974 with regard to pensions. The Union asserts that 187 workers were excluded from receiving pension benefits on the grounds that they had not completed 30 years of service despite the fact that they had already been receiving their pensions for three years. In its reply the Government states that the Peruvian Steamship Company had exhausted its available financial means in order to make payment of an amount of $3,400,000 in incentives and social benefits to its 1,200 workers, and that it did not have any other means to meet its other obligations which had been contracted later. The Government states that the Board of Liquidators invested $2,200,000 up to October 1992, the date at which the workers were put under the responsibility of the Ministry of Economy and Finance in view of the necessity to find a solution to the payment of indemnities and pensions. The Government adds that for this reason the list of 1,200 dismissed workers and pensioners has been progressively settled in conformity with the provisions of Legislative Decree No. 763 which banned any admission or reinstatement in the scheme, which would have occurred setting aside the provisions of Legislative Decree No. 20530. The Government acknowledges that 180 former pensioners of the Peruvian Steamship Company were excluded, 14 of whom obtained a favourable decision ordering their reinstatement in the scheme. It would appear that another group of workers failed to obtain a favourable ruling. The Committee notes the foregoing and asks the Government to indicate in its next report as to what is the position of this last group of workers vis-à-vis the Convention. In this connection, the Committee recalls that the Peruvian pension system has given rise to a number of comments on the application of ratified Conventions and that in its last observation it asked the Government to provide a detailed report on the application of Convention No. 71. It therefore reiterates that request and asks the Government to provide a detailed report containing the information required by the report form for *Articles 2, 3 and 4 of the Convention*, together with general information on its application in practice *(point V of the report form)*.

[The Government is asked to report in detail in 1999.]

* * *

In addition, a request regarding certain points is being addressed directly to *Lebanon*.

Convention No. 73: Medical Examination (Seafarers), 1946

Requests regarding certain points are being addressed directly to the following States: *Malta, Tajikistan*.

Information supplied by *Spain* has been noted by the Committee.

Convention No. 74: Certification of Able Seamen, 1946

Requests regarding certain points are being addressed directly to the following States: *Ghana, Poland*.

Convention No. 77: Medical Examination of Young Persons (Industry), 1946

Bolivia (ratification: 1973)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> In the comments it has been making for more than 20 years, the Committee has drawn the Government's attention to the absence of any provisions in laws or regulations to give effect to *Articles 2, 3, 4, 5, 6 and 7 of the Convention*.
>
> On several occasions the Government has referred in its reports to the adoption of the General Regulations of the Act on Health, Occupational Safety and Welfare, which was to give effect to the above-mentioned provisions of the Convention. In its latest report the Government provides information on specific activities for organizing the operation of medical services in enterprises, which have led to the preparation of a Pilot Plan for a Medical Reconnaissance Service. According to the Government, the Pilot Plan will contribute to providing information and experience for implementing the Regulations on Medical Services in Enterprises which have already been drafted. According to the Government, the Plan should go into operation in the early part of 1995 after the most representative employers' and workers' organizations have been consulted. The Committee's comments, the Government concludes, will then be given effect.
>
> The Committee takes note of this statement. It hopes that the adoption of the General Regulations of the Act on Health, Occupational Safety and Welfare and the Regulations on Medical Services in Enterprises will enable provisions to be adopted on the medical examination of young persons employed in industry, which will apply all the provisions of the Convention. The Committee asks the Government to provide information on progress towards the adoption of the above-mentioned Regulations and on any other measure taken to ensure compliance with the Convention.
>
> The Committee suggests that the Government may wish to call upon the Office for technical assistance in this matter.
>
> *Article 2*. The Committee draws the Government's attention to the fact that the medical examination provided for in the Convention is to certify not only that the young person is in good health, but also that he is fit for the work in question.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 81: Labour Inspection, 1947 [and Protocol, 1995]

Bolivia (ratification: 1973)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that, according to the Government's report for the period ending June 1993, it was considered practical to establish tripartite commissions to promote collaboration between officials of the labour inspectorate and employers and workers or their organizations *(Article 5(b) of the Convention)*. However, it notes that the introduction of these structures required the raising of the level of legal and vocational training of labour inspectors (*Article 7*), which could be achieved through a programme of technical assistance from the ILO Regional Office in Lima in the context of one or more of the projects planned for 1994. The Committee would be grateful if the Government would indicate in its next report the results of the measures adopted to promote the above collaboration and provide the necessary training, as set out in these provisions of the Convention.
>
> The Committee notes the information supplied by the Government in its report to the effect that the working conditions of labour inspectors have improved in comparison to those prevailing in 1989, except as regards urban transport, due to the limitations of the national budget. The Committee would be grateful if the Government would provide information on the improvements made in these working conditions and if it would indicate the measures which have been taken or are envisaged to furnish labour inspectors with the transport facilities necessary for the performance of their duties *(Article 11)*.
>
> The Committee would be grateful if the Government would indicate in its next report, taking into account the fact that the number of labour inspectors has to be sufficient to secure the effective discharge of the duties of the inspectorate, the manner in which it is ensured that workplaces are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions *(Articles 10 and 16)*.
>
> The Committee notes that it has not been possible to transmit to the Office an annual inspection report, but that the Government, according to the information supplied in its report, proposes to give effect to *Articles 20 and 21* of the Convention as soon as possible by establishing a system of statistics covering the annual activities of the labour inspection services and by compiling a classified and quantitative annual report, which it hopes to formulate in the context of the technical assistance projects referred to above that were planned as of 1994. The Committee trusts that the Government will transmit to the Office as soon as possible an annual inspection report in accordance with these provisions of the Convention.

The Committee once again hopes that the Government will make every effort to take the necessary action in the very near future.

Brazil (ratification: 1989)

The Committee notes the Government's report. It also notes the observations communicated by the Trade Union of Alimentation Industries Workers of Jundiaí, Cajamar, Campo Limpo Paulista, Louveira, Itupeva, Várzea Paulista and Vinhedo with respect to the application of the Convention as well as the Government's response to these comments, received at the ILO on 28 November 1997. The Committee notes that the unions claim the lack of efficiency of the labour inspection concerning the application of the provisions on safety and security at work. The Committee will examine these allegations as well as the information provided by the Government at its next session. The Committee also refers to its observation under the Occupational Safety and Health Convention, 1981 (No. 155).

Central African Republic (ratification: 1964)

Articles 10, 11 and 16 of the Convention. In its previous comments, the Committee noted that labour inspection duties were being performed in difficult material conditions and that inspectors had neither suitable offices nor transport facilities available to them. The Committee notes the information communicated by the Government in its report stating that the number of inspectors was insufficient to discharge effectively the duties entrusted to them. The Committee also notes the precarious nature of the material conditions for carrying out inspection duties (fire and the failure to rebuild the Regional Labour Inspectorate in Bangui; lack of vehicles available to the Labour Directorate General giving rise to a lack of efficiency in regional inspections; shortage of supplies and equipment; failure to reimburse travelling expenses to inspectors).

The Committee hopes that the Government will take the necessary measures so that labour inspection duties can be performed by making available the necessary resources and so that workplaces can be inspected as often and as thoroughly as is required. The Committee is addressing a request directly to the Government concerning the application of *Articles 3, paragraph 2, 20 and 21* of the Convention.

Chad (ratification: 1965)

With reference to its previous comments, the Committee notes with interest the content of the new Labour Code promulgated on 11 December 1996 (Act No. 38/PR/96). The Committee also notes the information supplied by the Government in its report for the period 1993-94, received in 1996, and the observations made in 1997 by the Trade Union Confederation of Chad (CST) as well as the Government's reply to these observations.

1. *Articles 12 and 13, paragraph 2(a), of the Convention.* The Committee notes with satisfaction that section 479(2) of the 1996 Labour Code provides that inspectors shall notify the employer of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties. The Committee also notes with interest that under section 224(3), the labour inspector or occupational health inspector may make orders to be given immediate effect, in the event of imminent danger to the health or safety of the workers.

2. *Article 10.* The Committee notes the Government's information on the efforts made to satisfy the requirements of this Article of the Convention, particularly in relation to the number of assistant labour inspectors appointed or undergoing training as well as the number of labour inspectorate staff. The Committee requests the Government to continue to supply information on any progress made in this regard.

3. *Articles 11 and 16.* The Committee notes the provisions of the Labour Code relating to the availability of suitable premises and reimbursement of transport costs in the absence of public transport (section 478). The Committee notes, however, that in practice there is a lack of functional premises and means of transport (vehicles and mopeds). In this regard, the Committee notes the observations of the Trade Union Confederation of Chad which emphasizes once again the lack of resources and scant interest granted to inspection. According to the CST, contrary to other administrations in the country which have operating resources and means of transport, labour inspectors and labour supervisors do not have even the most elementary resources for carrying out inspection and supervisory visits. The Committee notes that the Government indicates in its reply that endeavours are being made to improve the situation of the labour inspectorate. The Committee requests the Government to indicate the measures taken or envisaged to

provide the labour inspectorate with adequate resources to enable it to carry out visits to enterprises, as often as necessary, and to ensure the effective application of the legal provisions related to working conditions and the protection of workers.

Comoros (ratification: 1978)

With reference to its previous comments, the Committee notes the information supplied by the Government in its report on the subject of enhancing regional inspections, particularly by gradually assigning qualified officials to them. The Committee hopes that the Government will continue to supply information on progress made, both in regard to the number of inspectors and to the resources made available to the labour inspectorate.

Costa Rica (ratification: 1954)

The Committee notes that the Government's report has not been received. The Committee notes the observations presented by the Inter Confederal Committee of Costa Rica (CICC) alleging non-observance by the Government of Costa Rica of eight Conventions ratified by Costa Rica, including Convention No. 81. The allegations of the Inter Confederal Committee relate to the following: (i) absence of adequate training of labour inspectors for the performance of their duties (*Article 7, paragraph 3, of the Convention*); (ii) insufficient number of labour inspectors (*Article 10*); (iii) insufficient material support (*Article 11*); (iv) delays in enforcement proceedings (*Article 17*); and (v) absence of publication of the reports (*Article 20*).

The Committee hopes that the Government will supply a detailed report on the application of the Convention as well as its comments on the allegations by the Inter Confederal Committee of Costa Rica.

France (ratification: 1950)

Further to its previous comments which concerned the application of the Convention in relation to the adoption of several decrees to reform the organization of the decentralized departments of the Ministry of Labour, Employment and Vocational Training, the Committee notes the information supplied by the Government in its report. It also notes the observations made by the CGT National Union of Social Affairs (UNAS), the General Confederation of Labour "Force ouvrière" (FO), and the French Democratic Confederation of Labour (CFDT) concerning, among other matters, the strength of the labour inspectorate, the establishment of the National Labour Inspection Council and notification to the inspectorate of serious occupational accidents. The Committee also notes the opinion adopted by the Economic and Social Council on 24 January 1996 on the labour inspectorate, summing up the functions and means of the inspectorate and submitting proposals. Among the objectives of the proposals concerning the organization and activities of the labour inspectorate are the guarantee of the independence of the inspectorate, and the priority for supervision. The Committee notes with interest that there is currently a wide-ranging debate on the labour inspectorate. It requests the Government to provide information on the specific proposals for reform of labour inspection, which may be adopted following the opinion of the Economic and Social Council in connection with the application of the Convention. The Committee is addressing a direct request to the Government on the application of *Articles 5, 10, 14 and 16 of the Convention*.

Ghana (ratification: 1959)

Articles 3, paragraph 1, 10 and 16 of the Convention. In its previous comments the Committee noted that the number of inspectors had dropped from 171 (in 1991) to 98 (in 1995) and the number of inspection visits from 907 (in 1991) to 413 (in 1992). The Committee also noted that most of the vehicles at the disposal of the labour inspectors had broken down and that the reimbursement of travelling expenses to labour inspectors was delayed. The Committee notes the Government's indication in its latest report that nine labour officers and 34 labour inspectors had been recruited in 1996, two vehicles acquired, travel allowances paid and that there were 1,139 inspection visits between July 1995 to June 1996. Noting the Government's statement that one of the Labour Department's prioritized functions is the need to enhance labour inspection activities, with a view to ensuring the effective application of the relevant laws, the Committee hopes that the Government will provide information on any further measures taken to enhance labour inspection, in particular by making available the necessary human and material means to ensure that workplaces are inspected as often and as thoroughly as necessary.

Articles 20 and 21. In its previous comments the Committee noted that no annual labour inspection report had been received and that the most recent one concerned the period 1973-74 and was received in 1980. The Committee takes note of the consolidated report by the Labour Department covering the period 1975-90, which the Government sent with its latest report, which gives some indications on establishment inspections, but does not provide all the information required under *Article 21*. The Committee expresses once again the hope that the Government will take the appropriate measures to ensure that annual inspection reports, containing precise information on all the matters enumerated in *Article 21*, are published and transmitted to the ILO within the time-limits set out in *Article 20*. Referring also to its 1996 general observation under the Convention relating to the practical guidelines for collection, recording and communication of reliable data on occupational accidents and diseases contained in the 1996 ILO publication "Recording and notification of occupational accidents and diseases", the Committee hopes that the Government will report on any progress in this regard.

Greece (ratification: 1955)

The Committee notes that at its 268th Session (March 1997), the Governing Body adopted the report of the committee set up to examine the representation made by the Federation of the Associations of Public Servants of the Ministry of Labour of Greece, under article 24 of the Constitution, alleging non-observance by Greece of the Labour Inspection Convention, 1947 (No. 81). The allegations relate to the incorporation of the labour inspectorate into autonomous prefectural administrations and to the consequences this incorporation has had on its operations. In its representation, the complainant Federation stated that since the new system came into force the labour inspectorate has experienced a real decline, as evidenced in particular by the lack of cooperation and coordination between inspection services, a failure to apply labour standards uniformly, the incorporation of the labour inspectorate into other prefectural services by assigning to them other tasks unrelated to their responsibilities, the transfer of competent and experienced inspectors to other services and the assignment to the labour inspectorate of people without experience or training in this area, the absence of guarantees of stability and independence for labour inspectors, and problems of informing workers of collective agreements and occupational relations. The Committee of Experts notes that the committee set up concluded that the organization of the labour inspectorate, as it results from Act No.

2218/1994 contravenes *Article 4, paragraph 1,* and *Articles 6, 19 and 20 of the Convention.*

Under the recommendations appearing in the Committee's report, the Government is requested to take the necessary measures to bring its legislation into conformity with the provisions of the Convention, in particular by placing the labour inspectorate under the supervision and control of a central authority. Under the same recommendations, it is also requested to submit, in accordance with article 22 of the Constitution, a report containing detailed information on the measures taken to give effect to the provisions of the Convention.

The Committee notes the information provided by the Government in September 1997, according to which a committee has been set up with a view to preparing a Bill for the reorganization and reintegration of the labour inspection services into the Ministry of Labour and Social Security. The committee comprises three directors-general of the Ministry, the heads of the labour inspectorate and of administrative organization, a civil servant from the Directorate for Working Conditions, and the President of the Federation of the Associations of Public Servants of the Ministry of Labour. The Committee requests the Government to provide information on the progress of the Committee's work and on that made in the application of the Convention.

Libyan Arab Jamahiriya (ratification: 1971)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee recalls the discussion which took place in the Conference in 1992 and the Government's report in which indications were given that the inspection machinery was undergoing reorganization and that new inspectors would be named after a period of training. It further notes the general information provided with respect to the number of inspections carried out and violations recorded in 1991 which were neither published (as required by *Article 20 of the Convention*) nor do they contain all the information required (by *Article 21*). It trusts measures will be taken shortly to ensure that the Convention is fully observed, and that annual labour inspection reports containing information on the work of the labour inspection services, including statistics on the subjects listed under *Article 21*, will be published and transmitted within the time-limits as required by *Article 20*.
>
> The Committee further notes that the Government's report refers variously to labour inspectors, employment inspectors and municipal inspectors. The Committee would be grateful if the Government would indicate what are the status, conditions of service and of recruitment, the means used to establish the qualifications as well as any arrangements made to ensure the initial and subsequent training of these inspectors.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mali (ratification: 1964)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee takes note of the Government's report which refers to information supplied previously on the subject of the labour inspection situation. It also takes note of the project to support labour services with the general objective of dynamizing these services and strengthening their intervention capacity.
>
> The Committee is sending directly to the Government a direct request on a number of points.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mauritania (ratification: 1963)

1. *Article 6 of the Convention* (absence of status guaranteeing stability and independence of inspection staff). In its previous comments, the Committee noted that for more than 20 years the Government stated the following: that it was drawing up regulations for labour inspection staff; that such a project was prepared with the ILO's assistance; and that the issue was examined by a direct contacts mission in 1992. The Committee notes the information provided by the Government in its last report that, although the draft regulations for inspection staff have not yet been adopted, inspectors are performing their duties with complete independence and impartiality; both the Government and the inspectors themselves are concerned with this issue which was the subject of a seminar organized for the inspectors with the ILO's support, one of the recommendations of which was to adopt such regulations as soon as possible.

The Committee recalls that under this Article of the Convention, the inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences. This is an essential principle on which the effectiveness of the inspection system is based. The Committee expresses the hope that the necessary provisions will be adopted in the near future and that the Government will provide information on the progress made.

2. The Committee is again addressing a direct request to the Government on the application of *Articles 7, 10, 11, 16, 20 and 21 of the Convention*.

Morocco (ratification: 1958)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> Further to its previous observation, the Committee notes the information supplied by the Government.
>
> *Article 2 of the Convention*. The Committee notes the information supplied by the Government concerning visits carried out by the labour inspectorate in industrial establishments. It asks the Government to provide more detailed information on inspection activities, particularly in carpet factories where child labour is widespread according to information provided earlier by trade union organizations.
>
> *Article 3, paragraph 1(c)*. The Committee indicates that periodical meetings are organized with regional delegates under the chairmanship of the Minister of Employment and Social Affairs, to present and make proposals on shortcomings or difficulties noted by labour inspectors due to the lack of legal provisions. The Committee notes that its comments on this point are taken into account by section 453 of the draft Labour Code. It asks the Government to provide information on the status of the above-mentioned draft, and the action taken on issues raised in the reports of regional delegates in 1993.
>
> *Article 3, paragraph 2*. The Committee notes that, according to the figures supplied in the Government's report, the conciliation activities undertaken by labour inspectors, particularly with regard to individual labour disputes, appear considerable. The Committee refers to paragraphs 99 to 102 of its 1985 General Survey on labour inspection regarding the need to ensure that there is no ideal compromise as concerns the enforcement of legal provisions, which is one of the primary functions of the labour inspectorate. It asks the Government to indicate the measures taken or envisaged to ensure that the conciliation duties of labour inspectors neither interfere with the discharge of their main duties nor impair in any

way the authority or impartiality which is necessary in their relations with employers and workers.

Articles 10 and 11. The Committee notes with interest the information supplied by the Government concerning the new means available to labour inspectors which, according to the Government, are likely to increase their activities. The Committee asks the Government to provide information on the effects of the new means on the activities of the labour inspectorate.

Articles 20 and 21. The Committee notes the summary of the reports of the labour inspection delegates and the information and statistics provided in the Government's report. With reference to its previous comments, the Committee asks the Government to take the necessary steps to ensure that annual inspection reports are published and sent to the Office within the time-limit set by *Article 20 of the Convention*, and that they contain all the information required by *Article 21*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

New Zealand (ratification: 1959)

Further to its previous comments, the Committee notes the detailed information provided by the Government in its report. It also notes the comments by the New Zealand Employers' Federation (NZEF) and by the New Zealand Council of Trade Unions (NZCTU), as well as the Government's reply to these comments. The Committee has also taken note of the discussion in the Conference Committee on the Application of Standards in 1996.

Scope of the national system of labour inspection

1. The Committee notes the Government's indication that a system of labour inspection is maintained in respect of all workplaces, including industrial, commercial, non-commercial workplaces, and in all industries including in agricultural, transport and mining industries and consists of a Health and Safety Inspectorate and of a Labour Inspectorate.

2. *Application to public sector undertakings.* The Government states that no distinction is made in the Employment Contracts Act, 1991, the Health and Safety in Employment Act, 1992, and most other employment legislation between public and private sector workplaces; local government industrial undertakings are fully covered by the inspectorates, no industrial workplaces are core Crown agencies, as the Government has divested in recent years its industrial undertakings, and the remainder has been restructured as state-owned enterprises, which, according to a Crown law office opinion are not considered part of the Crown for minimum code jurisdictional purposes. The Committee also notes that in response to the NZCTU which considers that public organizations are treated differently from those in the private sector, the Government states that while the Crown cannot be prosecuted under the Health and Safety in Employment Act, an application can be made under section 3 of that legislation to the High Court. The Committee takes note of these explanations. It hopes that all the necessary measures have been taken or would be envisaged to fully apply the Convention in law and in practice to public sector industrial undertakings *(Articles 1, 2 and 17, paragraph 1, of the Convention).*

3. *Extension to commercial undertakings.* The Committee notes the Government's statement that although New Zealand's ratification of the Convention excluded Part II on labour inspection in commerce, the system of labour inspection applies equally to the

commercial sector and no distinction is made in law or in administrative practice by the labour inspectorate between industry and commerce. The Committee notes that the Government is further examining national law and practice and how it relates to the possibility of ratifying the remaining Articles of the Convention. The Committee recalls that a Member who has made a declaration of exclusion of Part II may at any time cancel that declaration by a subsequent declaration. The Committee hopes that the Government will in its future reports provide information on any developments in this regard (*Article 25, paragraph 2)*.

Enforcement

4. *Adequacy of the number of inspectors.* The Committee notes that the NZCTU questions whether the 19 inspectors in six offices of the Labour Inspectorate are capable of monitoring and effectively enforcing the minimum code, and why a large disparity exists with the number of inspectors in the Safety and Health Inspectorate (234 in 18 offices). The Committee notes the Government's statement to the Conference Committee and in its report that it believed that the first step in an efficient enforcement policy was to prevent abuse through active information, a key source being the Inspectorate's information centre opened in 1994 which provided information in reply to approximately 150,000 requests per year, of which one-quarter were from employers. The Government adds that there exists a separation of functions in the Labour Inspectorate which comprises labour inspectors responsible for the enforcement of the statutory employment conditions and information officers, thus allowing inspectors to concentrate on their enforcement roles.

The Committee notes that the number of inspectors in the Labour Inspectorate, which in the past was on the increase, has remained the same since the examination of the Government's previous report. It also notes that the NZCTU continues to allege that this number is inadequate. The Committee, referring also to paragraphs 211 and 215 of its 1985 General Survey on labour inspection, hopes that appropriate consideration is given to the factors to be taken into consideration in accordance with Article 10 of the Convention, so that workplaces can be inspected as often and as thoroughly as necessary and that the Government will provide information in this regard (*Articles 10 and 16)*.

5. *Regular versus complaint-based procedures*. The Committee notes the Government's information on the national priority areas identified by the Occupational Safety and Health Service for the proactive workplace visits by the Health and Safety Inspectorate, and on the anticipated investigations following complaints and notified events. The Committee notes the comments by the NZEF on the onus placed on the employer by the 1992 Health and Safety Act to provide a safe and healthy working environment. Employers are required to have effective methods for detecting, assessing and eliminating hazards, or for minimizing their effects by protective equipment and clothing; they are also required to maintain safety and health facilities and to take all practicable steps to obtain the workers' consent to the monitoring of their health in relation to any hazard.

The Committee further notes the Government's indication that the inspection of workplaces in relation to the application of legislation administered and enforced by the Labour Inspectorate in the industrial relations service is normally undertaken in response to formal complaints; and that proactive enforcement is also carried out to achieve more widespread compliance with relevant employment obligations.

The Committee takes note of the comments by the NZCTU, alleging that the Government has adopted a "hands-off" policy in relation to enforcement of the minimum code of employment rights, while the CTU views the role of the Labour Inspectorate within the industrial relations service as pivotal to ensuring that the parties to employment contracts comply with their obligations under the minimum code through both the provision of information and investigation. According to the NZCTU the Government's report shows that it considers the most effective compliance with the minimum code is through the provision of information, accessibility to institutions and empowerment of employees and employers. No reference is made to enforcement through self-initiated labour inspection, while proactive investigation is essential to ensuring compliance with the minimum code.

The NZCTU adds that the complaint-based inspection in the Labour Inspectorate means that breaches of law are routinely unreported and undetected: anonymous complaints are not responded to; complainants fear retribution if identified; complaints are often only made in extreme circumstances, or when an employee is on the point of leaving the job. Referring in particular to the role of the Labour Inspectorate under the Equal Pay Act, 1972, the NZCTU alleges that the enforcement of this Act is consistently inadequate (Report on the Efficiency of the Equal Pay Act by the Ministry of Women's Affairs 1994); only four complaints have been filed since 1988, which is a sign not of the satisfactory application of the Act, but rather a consequence of the inactivity of the Labour Inspectorate, its policy being now to respond only to written complaints and not to make routine inspections, which are essential to enforcing the Equal Pay Act.

The Committee requests the Government to provide its comments on these allegations by the NZCTU, in particular as to the balance between complaint-based versus routine inspections by the Labour Inspectorate, and in general, on the measures taken or envisaged to ensure that workplaces are inspected as often and as thoroughly as necessary to ensure the effective application of the relevant legal provisions *(Article 3, paragraph 1(a) and Article 16)*.

6. *Confidentiality of complaints*. The Committee notes the information provided by the Government that though the labour inspectors' intention is not to divulge the source of any complaint unless it is absolutely necessary, in many cases the source must be revealed in order to inquire about specific wage records and for the purpose of paying arrears. Referring also to its previous comments, the Committee again draws the Government's attention to existing alternative means of investigation by generalizing the inquiry and examination of the undertaking's records to permit dealing not only with the complaint but also to possibly uncovering other cases. The Committee hopes that the Government will provide information on any improvements made in this respect *(Article 15(c))*.

7. *Power to enter the premises*. In its previous comments the Committee noted that under the Employment Contracts Act (section 144(1)(A)) and the Health and Safety in Employment Act (sections 31(1) and 35) inspectors may enter the premises or workplace at any reasonable hour. It recalled the importance of the power of inspectors to enter establishments liable to inspection at any hour of the day or night. The Committee takes note of the statement by the Government to the Conference Committee that inspectors are empowered to enter workplaces during their operating hours whether daytime or night-time. It also notes the Government's statement in its report that in practice the difference between "any reasonable" and "any hours of the night or day", is a semantic distinction. The Committee refers to paragraphs 163 and 164 of its 1985 General Survey on labour inspection where it indicated that such a clause would not appear contrary to the spirit of the Convention, in so far as it is up to the inspector to decide whether or not a night visit is "reasonable" and in so far as this right is clearly

recognized in the country's administrative or legal practice. The Committee hopes that the Government will provide information as to the practice *(Article 12, paragraph 1(a))*.

8. *Prosecution and sanctions.* The Committee notes that the NZCTU alleges that, as concerns in particular a range of statutes such as the Minimum Wage Act and the Holidays with Pay Act, the Labour Inspectorate does not prosecute offending employers with a view to having criminal penalties imposed on them. The Committee notes the Government's reply to the effect that the Labour Inspectorate's priority is to ensure that a breach is rectified, this being generally accomplished without the need for formal action in court; however, penalties are sought in cases of serious breach warranting this action. The Committee requests the Government to provide information on the cases in which action was initiated including copies of court decisions. As concerns the Safety and Health Inspectorate the Committee notes that the NZCTU alleges that breaches of the legislation are only prosecuted selectively, based in part on the availability of resources, which has the effect that certain types of breaches are unlikely to be penalized. The Committee notes the Government's reply that all cases of possible non-compliance are considered in accordance with OSH's prosecution guidelines, which have recently been revised. The Committee hopes that the Government will provide information on the results achieved in the application of safety and health provisions through the revised prosecution guidelines *(Article 17, paragraph 1)*.

Supervision and control of a central authority; independence and stability

9. The Committee notes the NZCTU's comment that there is some evidence that the Safety and Health Inspectorate is looking to contract out some of its responsibilities to third-party providers, some of whom are likely to be employers allowed to assess themselves or to audit their own workplace. The Committee takes note of the Government's reply that the Safety and Health Inspectorate is currently in the process of examining various options to increase its effectiveness, including the use of third-parties to promote safety and health. The Government adds that responsibility for enforcement cannot be contracted out and that any third-party approach would by definition not include an approach where employers would self-audit their workplaces without independent validation to ensure that there would be no abuse. The Committee requests the Government to provide information on further developments in this matter. Recalling in particular the obligations under *Articles 4 and 6 of the Convention*, the Committee hopes that any action taken will respect the provisions of these Articles of the Convention.

Cooperation: Notification of occupational accidents and diseases

10. The Committee has previously noted the comments by NZCTU of a lack of cooperation between the Safety and Health Inspectorate and the Accident Rehabilitation and Compensation Insurance Corporation (ARCIC). The Committee notes the Government's indication that in 1996 these two agencies signed joint work collaboration protocols to improve the coordination and effectiveness of the workplace injury prevention activities *(Article 5(a))*.

The Committee also notes the information provided by the Government on measures taken to ensure that occupational accidents and diseases be notified, failure to notify being considered as a serious offence. The Committee notes however the indication by the NZCTU that the ability of the Health and Safety Inspectorate to investigate serious accidents may be reduced by the proposed introduction of a time-activated standard for the definition of serious harm and that this is likely to reduce the number of temporary severe cases of serious harm that are reported, thereby reducing the inspection awareness of severe injury cases, and their ability to inspect the circumstances leading up to the injury. The Committee also notes the Government's reply that no decision has yet been taken to change the definition of serious harm and that one of the reasons for the present low level of notification is lack of understanding of the requirements by employers. Notification being an important factor for inspection and prevention targets, the Committee hopes that the Government will continue to provide information on measures taken for the improvement of notification of occupational accidents and diseases *(Article 14)*.

Sri Lanka (ratification: 1956)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information supplied by the Government in its report in reply to the observations made by the Ceylan Workers' Congress (CWC) and the Lanka Jathika Estate Workers' Union, as well as the comments made previously by the Jathika Sevaka Sangamaya.
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> *Article 3, paragraph 1(a), of the Convention.* The Committee recalls the observations made by the Jathika Kevaka Sangamaya concerning the working conditions and special risks and hazards faced by workers in the growing number of self-employed small industries and the fast-growing industries in the export processing zones, using highly sophisticated equipment and dangerous chemicals and resorting to extra hours of work for women and young persons, including night work. The Committee notes the information supplied by the Government concerning the legislation to protect children, young people and women. It also notes that, according to the Government, young people are not allowed to work in export processing zones. It asks the Government to provide information on the supervision of the application of the legal provisions to protect children and young people, particularly the Employment of Young Persons and Children Act, No. 47 of 1956, and on the activities of the labour inspectorate in export processing zones.
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> *Article 5(b).* The Committee refers to the observations made by the Lanka Jathika Estate Workers' Union to the effect that a national programme should be drawn up by the state authorities concerned, in conjunction with the relevant employers' and workers' organizations, on a tripartite basis, in a joint effort to improve coordination and cooperation with a view to better application of the Convention. The Committee asks the Government to indicate the measures taken or envisaged to encourage cooperation between labour inspectors and employers and workers or their organizations.
>
> *Articles 10 and 16.* In its previous comments, the Committee noted the Government's indication that measures had been taken to reinforce the labour inspectorate by creating 50 new posts. The Committee notes the observation by the Lanka Jathika Estate Workers' Union to the effect that this does not suffice to meet the demands of the rapidly expanding industrial sector. It notes the Government's indication that the matter of the increase of the number of inspectors and the shortage of funding for labour inspectors is being studied. The Committee also refers to the observations made previously by the Jathika Kevaka Sangamaya concerning working conditions in garment factories employing women. It notes the Government's indications in its report that 1,089 inspection visits were carried out in 1993 and 1,389 in 1994 in the garment manufacturing sector and that measures will be taken to strengthen the labour inspectorate in all sectors of the economy. The Committee also notes that in the mines and quarries sector there were approximately 1,240 inspections in 1993. The Committee hopes that the Government will take the necessary steps to increase the number of labour inspectors as well as the number and frequency of inspections, and asks it to provide information on the measures taken as a result of its examination of the question of the increase of the number of labour inspectors and the shortage of funds.

Articles 20 and 21. The Committee notes the Government's indication that the necessary measures will be taken to prepare an inspection report in order to comply, in future, with the provisions of the Convention. The Committee would like to recall, as it did in its previous comments, that these reports must be published within the time limit set by Article 20, and address all the points listed in Article 21(a) to (g). It draws the Government's attention to the explanations in paragraphs 277 and 281 of its 1985 General Survey on labour inspection, regarding the form, method of publication and content of these reports. It trusts that the Government will take the necessary measures in this respect in the near future.

Uruguay (ratification: 1973)

In its previous comments the Committee noted that the Governing Body had adopted the report of the Committee set up to examine the representation made under article 24 of the Constitution by a number of trade union organizations which alleged non-observance of several Conventions, including Convention No. 81, in connection with the high number of accidents in the construction sector. The above Committee concluded that, in practice, the application of the Convention was not ensured and recommended that the Government take the necessary steps to ensure observance of the existing safety and health standards, strengthen the labour inspection system and enforce sanctions.

The Committee notes the information supplied by the Government in its report, much of which concerns inspection in the construction sector. It also notes the conclusions and recommendations in the report, approved by the Governing Body at its 270th Session (November 1997), of the Committee set up to examine a representation submitted under article 24 of the Constitution alleging non-observance of the Occupational Safety and Health Convention, 1981 (No. 115). The Committee notes that, both in its report and in the course of the article 24 procedure, the Government gives a detailed account of the measures taken regarding legislation, and the organization, training and operation of the labour inspectorate.

1. Measures in the construction sector:
Legislative measures

The Committee notes the adoption of several new occupational health and safety standards for the construction sector, which involve the Labour Inspectorate. It notes Decree No. 283/996 of 10 July and the Ministerial Decision of 12 August 1996 laying down the obligation to submit safety and health studies and a safety and health plan to the General Labour and Social Security Inspectorate (IGTSS) before a work site is opened and at every stage of the work.

Emergency Plan

The Committee notes the Emergency Plan for safety in the construction industry which was designed and developed by the IGTSS as part of the Annual Inspection Plan in response to the increase in the number of accidents in the construction industry. The Plan for the construction sector was adopted in February 1996 and its purpose was to reduce the accident rate through inspection and preventive measures. The components of the Plan were: the programme to provide the IGTSS with human and material resources, the programme for cooperation with other institutions involved in the construction sector, the programme for the inspection of occupational safety and health conditions in construction, the programme for safety training of the inspectorate, the programme of information on risks in construction and the safety measures to be taken. The programmes have achieved the following results:

As a result of the programme to provide the IGTSS with human and material resources, the number of inspectors specialized in occupational safety and health has increased and now stands at 28; administrative and technical staff have been made available, vehicles and other suitable means such as the gradual computerization of data processing have been placed at the disposal of the inspectors *(Articles 10 and 11 of the Convention)*.

The cooperation programme was organized to ensure participation by all the persons involved in the construction sector in health and safety matters: cooperation agreements have been concluded with financial assistance and participation of the ILO amongst others *(Article 5)*; Decree No. 83/96 has established the National Occupational Health and Safety Council.

The training programme, which includes the staff of the IGTSS, has made it possible to offer training courses to newly appointed young inspectors and experienced inspectors, with financial participation and assistance by the ILO *(Article 7)*.

The programme for the inspection of occupational health and safety conditions was designed to reduce the accident rate by detecting, evaluating and remedying risks within a specified time-limit or by preventive closure. Inspection visits were planned according to the size of the works, the extent of the risk, the number of persons employed and the complaints submitted. The Committee notes the information on the first results of this programme:

- With regard to the number of inspection visits, the Committee notes with interest that they increased by 80 per cent in 1996 over 1994 and by 23 per cent over 1995; that 3,688 inspections were carried out between September 1996 and May 1997, covering 60 per cent of workers in this sector; that during this period the total or partial closure of 142 enterprises was decided. It also notes with interest from the statistics supplied with the Government's report that 4,241 inspections were programmed in 1995 and 21,726 in 1996, which represents an increase of 92.44 per cent, the percentage being slightly lower in the first quarter of 1997 (82.6 per cent), whereas inspections following a complaint decreased from 12,548 to 1,755, amounting to 7.56 per cent of inspection visits.
- With regard to the number of occupational accidents in the construction sector, the Committee notes that their number has dropped as compared to previous years and as compared to other sectors, but that it is nonetheless high.

The Committee therefore hopes that the Government will pursue its efforts to strengthen the capacity of the labour inspectorate, in the construction sector as well as other sectors so that workplaces are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions and asks the Government to provide information on progress in this area *(Articles 3, 10 and 16)*.

2. *Legal proceedings and sanctions*

The Committee notes that the national legislation establishes sanctions for breaches of the laws and regulations and of international conventions (Act No. 15.903 of 10 November 1987, section 289 as amended by Act No. 16736 of 5 February 1996; Decree No. 89/995 of 21 February 1995, section 263). It notes the summary statistics of sanctions applied from 1995 to May 1997. It asks the Government to provide more detailed information on the measures taken by labour inspectors pursuant to *Articles 17 and 18 of the Convention*.

3. Inspection in the informal sector

The Committee notes the Government's statement in its report that inspection is difficult in the informal sectors and that consultations with the social partners are under way. The Committee asks the Government to provide information on any developments in this area and on the results of these consultations.

4. Notification of occupational accidents and diseases

The Committee is addressing a direct request to the Government concerning the notification of occupational accidents and diseases to the labour inspectorate and their publication in the annual inspection report, in accordance with *Articles 14, 20 and 21 of the Convention*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Antigua and Barbuda, Bahamas, Bangladesh, Burundi, Central African Republic, Chad, Comoros, Costa Rica, Côte d'Ivoire, Djibouti, Dominica, France, Ghana, Grenada, Guinea-Bissau, Honduras, Israel, Kenya, Mali, Mauritania, Morocco, New Zealand, Norway Romania, Swaziland, Switzerland, Uruguay, Venezuela.*

Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948

Algeria (ratification: 1962)

The Committee notes the information contained in the Government's report. The Committee recalls that its previous comments concerned sections 1,3, 4 and 5 of Legislative Decree No. 92-03 of 30 September 1992 on combating subversion and sections 43 and 48 of Act No. 90-02-90 on compulsory arbitration.

The Committee notes, first, that the Government reiterates the reply given in its previous report, namely that Legislative Decree No. 92-03 of 30 September 1992 bears no relationship to the occupational sector and implies no risk of impairment of the right of workers' organizations which comply with legislation and regulations on trade union law to organize their activities and formulate their action programmes. The Committee also notes that 410 strikes affecting over 130,000 workers were recorded during 1995. Nevertheless, the Committee asks the Government once again to supply in its next report information on the application in practice of section 1, read in conjunction with sections 3, 4 and 5, of Legislative Decree No. 92-03, since this provision provides for life imprisonment for any action which aims "to obstruct the operation of establishments providing public services" or "to impede traffic or freedom of movement in public places or highways". The Committee requests the Government to send it the text of any legal decision handed down on this matter. In addition, it asks the Government to take the necessary measures to ensure that these provisions cannot be applied to legitimate trade union activities.

While noting with interest that, according to the Government, the Arbitration Commission has never been invoked to put an end to a conflict, the Committee recalls, nevertheless, that the power conferred on the minister or the competent authority by section 48 of the Act to refer an industrial conflict to the Arbitration Commission should be used only at the request of both parties and that the imposition of arbitration to put an end to a strike should be used only in the case of a strike in essential sectors in the strict meaning of the term or for strikes whose extent and duration risk causing an acute national crisis. It therefore requests the Government to amend its legislation so as to bring it into conformity with the principles of freedom of association.

Argentina (ratification: 1960)

The Committee notes the information supplied by the Government in its report and recalls that its previous comments related to the following provisions of Act No. 23551 of 1988 which are contrary to the Convention:

- section 28 of the Act, which requires the petitioning association, in order to contest the trade union status of an association, to have a "considerably higher" number of members;
- section 21 of implementing Decree No. 467/88 which qualifies the term "considerably higher" by laying down that the association claiming trade union status should have at least 10 per cent more dues-paying members than the petitioning association;
- section 29 of the Act, which provides that "a trade union at the enterprise level may be granted trade union status only when another base-level trade union and/or a union does not already operate within the geographical area or the area of activity or category covered";
- section 30 which requires excessive conditions for granting trade union status to unions representing workshops, occupations or categories of workers;
- section 31(a), (b), (d) and (e) of the Act which gives exclusive rights to associations which have been granted trade union status over the other associations as regards representing various collective interests other than collective bargaining;
- section 38, which permits only associations enjoying trade union status, and not associations which are merely registered, to be funded by membership fees;
- section 39, which exempts only associations enjoying trade union status, and not associations which are merely registered, from taxes and levies;
- sections 48 and 52 of the Act, which provide that only the representatives of associations which have been granted trade union status enjoy special protection (fuero sindical).

The Committee regrets that, once again, the Government has not provided any new information on the issues it has been raising for many years and has merely limited itself to informing that the draft text to amend Act No. 23551, prepared with the participation of an ILO advisory mission in 1992, and which provides for the repeal or amendment of certain provisions (sections 28, 30, 38 and 39 of the Act and 21 of the implementing Decree), has still not been approved.

The Committee reminds the Government that by ratifying the Convention it has undertaken to guarantee the rights of workers to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing (*Article 2 of the Convention*). It has also undertaken to guarantee that the acquisition of legal personality by such organizations shall not be made subject to conditions of such a character as to restrict the application of the provisions of *Articles 2, 3 and 4 of the Convention (Article 7 of the Convention)*.

The Committee expresses once again the strong hope that the long-awaited approval of the amending text will take place soon and that the necessary measures will be adopted to amend the provisions of Act No. 23551 which were not included in the draft in question (section 29 on the excessive conditions imposed for an enterprise union to obtain trade union status, and sections 31, 48 and 52 which give priority over other associations to associations which have been granted trade union status in regard to representing various collective interests other than collective bargaining and in relation to trade union protection (fuero sindical)), for the purpose of avoiding any possibility of partiality or abuse in the determining of greater representativity of trade union organizations and the consequences thereof.

The Committee urges the Government once again in its next report to inform it of any positive developments in the matter and trusts that it will be able to note that, finally, the new legislation is consistent with the principles and provisions of the Convention.

The Committee is also addressing a request directly to the Government.

[The Government is asked to supply full particulars to the Conference at its 86th Session.]

Austria (ratification: 1960)

With reference to its previous comments concerning the need to amend the legislation in order to enable foreign workers to be eligible for election to work councils, the Committee notes the Government's statement in its latest report that in spite of repeated initiatives by the workers for the extension of eligibility in this respect, it has not yet been possible to accede to this demand.

The Committee also notes the Government's statement that a general collective agreement between the Austrian Confederation of Trade Unions and the Federal Economic Chamber of Austria dated 17 December 1970, establishes the possibility for the businesses belonging to the Federal Economic Chamber of Austria to select spokespersons to represent the interest of foreign workers in work councils. The Committee urges once again the Government to indicate in its next report any measures taken regarding the right of foreign workers to be eligible, at least for a reasonable proportion of posts, for election to work councils.

Barbados (ratification: 1967)

The Committee notes the information provided in the Government's report.

In its previous comments, the Committee had noted that, under section 4 of the Better Security Act of 1920 (Chapter 160), any person who wilfully breaks a contract of service or employment knowing that he or she may thus endanger real or personal property is liable to three months' imprisonment or a fine. The Committee had recalled that, if this provision was applicable in the event of a strike, it should be amended so that such penalties could only be imposed with respect to essential services in the strict sense of the term, namely those whose interruption would endanger the life, personal safety or health of whole or part of the population and that the sanctions should not be disproportionate to the seriousness of the violations.

The Committee notes that, although the Government has been indicating its intention to amend the Better Security Act since 1984, the Government has once again indicated in its latest report that no amendment has been made in this respect. The Committee therefore once again asks the Government to indicate, in its next report, the measures taken or envisaged to bring section 4 of the Better Security Act into conformity with the principles of freedom of association and to state whether this provision has been invoked in recent years.

Belarus (ratification: 1956)

The Committee notes the statement made by the Government representative to the Conference Committee on the Application of Standards in June 1997, and the discussion which took place therein. It further notes with interest that an ILO advisory mission took place in October 1997. The Committee also takes note of the conclusions of the Committee on Freedom of Association in Case No. 1885 (see 306th Report of the Committee on Freedom of Association approved by the Governing Body at its 268th Session (March 1997)) and the follow-up examination of Case No. 1849 (308th Report, approved by the Governing Body at its 270th Session in November 1997).

Article 3 of the Convention. In its previous comments the Committee urged the Government to amend Order No. 158 of 28 March 1995 which establishes a list of essential services in which strikes are prohibited, in order to ensure that workers' organizations in the transport sector unequivocally enjoy the right to strike for the defence of their economic, social and occupational interests. In this regard, the Committee notes with interest that, subsequent to the ILO mission, a draft Act to amend and supplement the Act respecting the procedure for the settlement of collective labour disputes has been prepared. The Committee is addressing a request directly to the Government concerning these draft amendments, as well as the draft Labour Code.

The Committee trusts that the proposed amendments to the Act on the settlement of labour disputes will be adopted in the near future and that it will ensure full conformity with the Convention. It requests the Government to indicate, in its next report, the progress made in this regard.

Article 4. In its previous comments the Committee noted the suspension by administrative decision (Presidential Decree No. 336) of the Free Trade Unions of Belarus following a strike in the transport sector. The Committee notes with regret that, despite a Constitutional Court judgement which concluded that the pertinent sections of Decree No. 336 were unconstitutional, a subsequent Presidential Order (No. 259 of 29 December 1995) was issued ordering the implementation of this decree. The Committee must once again stress that, under *Article 4 of the Convention*, workers' and employers' organizations shall not be liable to dissolution or suspension by administrative authority. It therefore expresses the firm hope that the necessary measures will be taken to abrogate Decree No. 336 so as to enable the Free Trade Unions of Belarus to carry out their trade union activities once again.

Belgium (ratification: 1951)

The Committee notes the information contained in the Government's report.

Once again, the Committee can only reiterate that for many years its previous comments have related to the need to take measures to ensure by law that objective, predetermined and detailed criteria are adopted in establishing rules for the access of workers' and employers' occupational organizations to the National Labour Council and that in this regard the Act of 29 May 1952 establishing the National Labour Council still contains no specific criteria on representativeness but leaves wide powers of discretion over nomination to the Goverment. The Committee expresses the firm hope that the Government will adopt legislation, in the near future, setting out such criteria. It requests the Government to indicate in its next report any progress made in this respect.

Benin (ratification: 1960)

The Committee notes the information contained in the Government's report to the effect that the Act on the right to strike and the new Labour Code will be sent to the Committee as soon as they have been adopted by the National Assembly.

With reference to its previous comments on the fact that section 8 of Ordinance No. 69-14 PR/MFPTRA of 19 June 1969 on the right to strike provides that personnel in public or private enterprises, organizations and establishments whose operation is necessary to the life of the nation may be deprived of the right to strike when the interruption of their service would harm the economy and the higher interests of the nation, the Committee stressed the need to confine restrictions on the right to strike to cases in which the right to strike can be limited or prohibited, namely to strike to civil servants exercising authority in the name of the State or to services whose interruption would endanger the life, personal safety or health of the whole or part of the population, and to ensure that any restrictions are combined with the appropriate guarantees. The Committee notes that the Government indicated in its previous reports that the Bill which is in process of adoption has taken its comments into account. In this regard, the Committee requests the Government to supply a copy of any legal text which is adopted, including the Labour Code, the Act respecting strikes or any other relevant texts.

Bolivia (ratification: 1965)

The Committee has noted the report on the direct contacts mission to Bolivia which took place from 6 to 9 October 1997, with reference to the application of Conventions Nos. 87 and 98, and the receptive and constructive attitude shown by the authorities and the social partners.

The Committee notes with interest that the authorities and the mission found formulae likely to resolve all the problems raised by the Committee and that the Ministry of Labour indicated that it would immediately set in motion the legal amendments requested, provided a consensus existed between the social partners. The authorities made it clear, however, that "(1) the recognition of the right to organize for public servants (excluding the right to strike) was not currently possible for politicial reasons but that the Government had no basic objections to granting such a right; and (2) the amendment of legislation to allow more than one trade union per enterprise was totally rejected by the Bolivian Central of Workers (COB); such an amendment would give rise to misunderstandings and was not therefore advisable for reasons of expediency and owing to a lack of consensus". The Committee emphasizes that both restrictions are incompatible with the requirements of Convention No. 87 and hopes that these problems in the application of the Convention may be overcome soon.

The Committee notes with interest that, according to the mission report, "as a result of the consensus which the mission identified between the Government and the social partners in relation to five important points to which objections were raised by the Committee of Experts, the Ministry of Labour undertook to submit the text of legal reforms to the Council of Ministers as soon as possible and to try to have the reforms adopted before the meeting of the Committee of Experts in December 1997". The five points on which the amendments proposed by the Committee of Experts are acceptable are as follows:

(1) Section 101 of the General Labour Act (wide powers of supervision of the labour inspectorate over the activities of trade unions).

(2) Section 129 of the Decree issued under the General Labour Act of 1943 (possibility of dissolving trade unions by administrative authority).

(3) Absence of provisions to protect workers who are not trade union leaders against acts of anti-union discrimination.

(4) Absence of provisions offering protection against all acts of interference by employers' organizations in workers' organizations and vice versa.

(5) Penal sanctions in case of general and solidarity strikes (section 2 of Legislative Decree No. 02565 of 1951). The consensus refers to the elimination of penal sanctions (the Bolivian Confederation of Private Employers (CEPB) maintains, however, that the strikes in question are illegal and that the penalties provided for in the General Labour Act in case of the infringement of its provisions are applied).

The Committee requests the Government to provide information on the measures adopted with a view to amending the legislation in relation to these five points on which there is complete consensus.

As regards the criticism towards the exclusion of agricultural workers from the scope of section 1 of the General Labour Act, the Committee notes that, according to the mission report, "a broad consensus exists on the amendment of the law, although the Government and the social partners must modify their points of view a little more. The Ministry of Labour undertook to call, as soon as possible, a tripartite meeting in order to try and obtain a complete consensus and to be able to take measures to reform the law referred to in this connection". The Committee requests the Government to provide information on the results of the tripartite meeting referred to.

Furthermore, the Committee notes that agricultural workers' unions exist in certain enterprises (although the authorities did not give examples of collective agreements in the agricultural sector), and that the vast majority of agricultural workers are self-employed.

The Committee observes that, according to the mission report, complete consensus does not exist among the social partners on the amendment of the remaining provisions which it criticized. These provisions refer to the refusal of the right to organize for public servants (section 104 of the General Labour Act); the impossibility of having more than one trade union in an enterprise (section 103 of the General Labour Act); certain requirements to be a trade union leader (Bolivian nationality (section 138 of the Decree issued under the General Labour Act) and to be employed by the enterprise (sections 6(c) and 7 of the Legislative Decree of June 1951)), and certain restrictions on the right to strike (majority of three-quarters of the workers for the declaration thereof (section 114 of the Act and section 159 of the Decree issued under the Act)); the unlawful nature of general and solidarity strikes (sections 1 and 2 of Legislative Decree No. 02565 of 1951); the unlawful nature of strikes in banks (section 1(c) of Supreme Decree No. 1959 of 1950) and the possibility of imposing compulsory arbitration by a decision of the executive authority in order to put an end to a strike (section 113 of the General Labour Act).

The Committee notes that, according to the mission report, with regard to the provisions on which complete consensus does not exist for their amendment, "the Ministry of Labour undertook to summon the social partners as part of the social dialogue to examine these matters once again (covering eight points) and to propose new amendments, once the Committee of Experts has formulated its comments on the application of Conventions Nos. 87 and 98, and information is available on the direct contacts mission report". The Committee emphasizes the importance of amending the legislation in relation to these matters and requests the Government to inform it of the results of the meeting with the social partners.

Furthermore, the Committee notes that, according to the mission report, judicial remedies exist which are resolved rapidly in the case of a refusal to grant legal status to trade union organizations, and that under section 4 of the Legislative Decree of 1994 trade unions are established "without prior authorization". Similarly, the Committee notes that "the authorities indicated to the mission that public markets (in which strikes are forbidden) are supply centres for cheap food and essential basic products for the most underprivileged sector of the population, and that in Bolivia these markets which are closely linked to the life and health of part of the population provide an essential service where strikes may be prohibited (when the mission raised this point with the Bolivian Central of Workers (COB), the Central did not contradict the statements made by the authorities)".

Furthermore, the Committee notes that between January and October 1997 1,143 collective agreements were concluded in the country, although the majority of these agreements are restricted to establishing wage rates without regulating other working conditions. The Committee invites the Government to take measures to develop collective bargaining, including in the agricultural sector, so as to ensure that such bargaining is not limited to setting wage rates but in practice covers other conditions of employment.

The Committee hopes that in its next report it will be able to observe that substantial progress has been made in the application of Conventions Nos. 87 and 98.

[The Government is asked to supply full particulars to the Conference at its 86th Session.]

Burkina Faso (ratification: 1960)

The Committee notes the information contained in the Government's report.

Recalling that its previous comments concerned the need to repeal the provisions requiring public servants to respect the revolutionary order under penalty of disciplinary sanctions set out in Zatu No. AN VI-008/FP/TRAV of 26 October 1988 establishing the general conditions of service of the public service (sections 6, 7, 9, 36 and 46), the Committee notes the Government's statement to the effect that the revision of the general conditions of service of the public service has not yet taken effect but that, as soon as it has, the comment on the need to repeal the above-mentioned provisions will be taken into account in the new text. Despite the Government's statements, the Committee nevertheless expresses its concern that the provisions in question are still in force and that the possibility of disciplinary sanctions still exists. It therefore asks the Government once again to repeal or amend these provisions which are contrary to *Article 3 of the Convention*.

Furthermore, the Committee draws the Government's attention to sections 1 and 6 of Act No. 45-60/AN of 25 July 1960 regulating the right to strike of civil servants and state officials regarding the Government's right to requisition in the event of a strike by civil servants. The Committee considers it necessary to restrict the public authorities' powers of requisition to cases in which the right to strike can be limited or prohibited, namely to services whose interruption would endanger the life, personal safety or health of the whole or part of the population, or in a situation of acute national crisis (see paragraphs 152 and 159 of the 1994 General Survey on freedom of association and collective bargaining).

The Committee requests the Government to keep it informed in its next report of any change in the situation, either in law or in practice and, in particular, to indicate the measures taken to repeal or amend sections 6, 7, 9, 36 and 46 of the general conditions of service of the public service of 26 October 1988 and sections 1 and 6 of Act No. 45-60/AN of 25 July 1960 governing the right to strike of civil servants and state officials, and to supply it with the new text on the revision of the general conditions of service of the public service to enable it to examine its conformity with the requirements of the Convention.

Cameroon (ratification: 1960)

The Committee notes the Government's report.

Article 2 of the Convention. Previous authorization. For several years, the Committee has pointed out that (1) Act No. 68/LF/19 of 18 November 1968 subjecting the legal existence of a trade union or occupational association of public servants to the previous approval of the Minister for Territorial Administration, and (2) section 6(2) of the 1992 Labour Code, under which persons forming a trade union that has not yet been registered and who act as if the said trade union has been registered shall be liable to prosecution, are not consistent with *Article 2 of the Convention*.

In addition, the Committee on Freedom of Association has been apprised of cases where registration of trade unions of public servants has been refused, particularly in the teaching sector, and the Conference Committee in June 1994 and June 1996 reminded the Government of the need to amend its legislation and practice in the very near future to ensure effective application of the Convention.

The Committee notes that the Government merely reiterates its previous statements that it will not fail to inform the Committee of developments in the declaration system. The Committee once again strongly urges the Government to take the necessary measures in the near future to ensure that workers, including public servants, have the right to form organizations of their choice, *without previous authorization*.

Article 5. Prior approval for affiliation to an international organization. Recalling that *Article 5 of the Convention* lays down that all occupational organizations shall have the right to affiliate freely with international organizations of workers and employers, the Committee points out once again to the Government that section 19 of Decree No. 69/DF/7 of 6 January 1969 provides that trade unions or occupational associations of public servants may not join a foreign occupational organization without obtaining prior approval from the minister responsible for "supervising fundamental freedoms".

The Committee had noted the Government's previous statements to the effect that this Decree is issued under Act No. 68/LF/7 of 19 November 1968 and will be brought into conformity with the Convention once the new Act on civil servants' unions is promulgated. The Committee once again urges the Government to take the necessary measures, in the very near future, to abolish prior approval in order to bring the legislation into conformity with this Article of the Convention.

The Committee would remind the Government that it can call on ILO technical assistance for the preparation of draft legislations in conformity with the Convention. The Committee expresses the firm hope that the Government will take the necessary measures in the near future and will supply a detailed report in this regard.

[The Government is asked to supply full particulars to the Conference at its 86th Session.]

Central African Republic (ratification: 1960)

The Committee notes the information contained in the Government's report.

The Committee recalls that its previous comments related to sections 1, 2 and 4 of Act No. 88/009 of 19 May 1988 on freedom of association and the protection of trade union rights, amending the Labour Code.

— Section 1 of the Act provides that any person having lost the status of worker cannot either belong to a trade union or take part in its leadership or administration.

— Section 2 provides that trade union officers must be members of an occupational trade union.

— Section 4 provides that occupational trade unions constituted in federations and confederations may group together in a single central national union.

The Committee recalls that provisions of this type may infringe the organization's right to elect their representatives in full freedom by preventing qualified persons, such as full-time union officers or pensioners, from carrying out union duties and that there is also a real risk of interference by the employer through the dismissal of trade union officers, which deprives them of their trade union office (see paragraph 117 of the 1994 General Survey on freedom of association and collective bargaining). The Committee therefore repeats its request that excessive restrictions regarding the requirement that trade union officers must belong to the same occupation should be relaxed in order to ensure that qualified persons such as those employed by the trade unions or pensioners may carry out union duties. It also requests the Government to ensure that first-level organizations may affiliate freely to federations and confederations of their own choosing.

The Committee notes with interest that the new Constitution of 14 January 1995 enshrines the possibility of trade union pluralism and freedom of association (article 10). In this regard, the end of the single trade union system must also be reflected in the implementing legislation. The Government indicated in its last two reports that legislation would be enacted in application of these constitutional provisions and the Committee requests it to supply copies of the legislation as soon as it has been adopted.

Furthermore, the Committee draws the Government's attention to section 11 of Order No. 81/028 of 1984 concerning the Government's power of requisition in the event of a strike, when so required by the "general interest". The Committee considers it necessary to restrict powers of requisition to cases in which the right to strike may be limited or even prohibited, namely in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population or in a situation of acute national crisis (op. cit., paragraphs 152 and 159).

In regard to the strict prohibition imposed on trade unions of meetings of a political nature to which the Government refers in its report, the Committee recalls that the evolution of the trade union movement and its increased recognition as a full social partner require that workers' organizations must be able to voice their opinions on political issues in the broad sense of the term and to express their views publicly on the Government's economic and social policy (op. cit., paragraphs 37, 130 and 131).

The Committee requests the Government to keep it informed in its next report of any change in the situation in either legislation or practice and, in particular, to indicate the measures taken to amend sections 1, 2 and 4 of the 1988 Act as well as section 11 of the Order of 1984 in order to bring them into full conformity with the requirements of the Convention.

Chad (ratification: 1960)

Referring to its previous comments, the Committee notes with satisfaction the contents of the new Labour Code enacted on 11 December 1996, which (1) revokes Ordinance No. 30 of 26 November 1975 suspending all strike action and Ordinance No. 001/CSM of 8 January 1976 prohibiting public employees and assimilated workers from exercising the right to organize; (2) lifts the ban on all political activity by trade unions; and (3) reduces the length of residence in the country required for foreigners able to participate in trade union administration or management.

The Committee expresses the firm hope that, in accordance with the assurances previously given by the Government, Ordinance No. 27/INT/SUR of 28 July 1962 on associations will shortly be amended to ensure that it does not apply to trade unions.

In addition, the Committee is addressing a direct request to the Government on certain points.

Colombia (ratification: 1976)

The Committee notes the Government's report and the information supplied by a government representative and the ensuing debates in the Conference Committee in 1997.

The Committee recalls that in its previous observation it noted that the Government had prepared a Bill with the assistance of the ILO mission on freedom of association which visited the country in October 1996, envisaging the repeal or amendment of various provisions of the Substantive Labour Code criticized by the Committee for several years, and that a government representative had informed the Conference Committee in 1997 that the Bill had been submitted to the Congress of the Republic in November 1996. In practice, the Bill repeals or amends the following provisions:

- section 365(g) on the requirement, in order for a trade union to be registered, that the labour inspector must certify that there is no other union;
- section 384 on the requirement that, in order to form a union, two-thirds of its members must be Colombian;
- section 388(1)(a) on the need to be of Colombian nationality to hold executive office in a trade union;
- section 388(c) on the requirement to have normally exercised the activity, trade or position characteristic of the trade union in order to be a trade union officer;
- section 432(2) on the need to be of Colombian nationality in order to be a member of a delegation submitting to an employer the list of claims that are being made;
- section 486 on the supervision of the internal management of trade unions and meetings of unions by public servants;
- section 444, last subsection, on the presence of the authorities at general assemblies convened to vote on referral to arbitration or on the calling of a strike;
- section 422(1)(c) on the need to have exercised the activity, occupation or position characteristic of the trade union in order to hold office in a federation or confederation;
- sections 388(f) and 422(f), which provide that a person must not have been condemned to a serious penalty, unless he or she has been rehabilitated, nor sued for ordinary offences at the time of election;

- section 380(3) which provides that "any member of a trade union executive who has been responsible for the dissolution of a union as a sanction may be denied the right of trade union association in any form for up to three years (...)";
- section 417(1), which provides that "federations and confederations have the right to the recognition of their legal personality and have the same functions as trade unions, except for the calling of a strike, which is the sole competence, when so authorized by the law, of the respective trade unions or groups of workers directly or indirectly concerned"; and
- section 488(3), which provides that "when a strike is called, the Minister of Labour and Social Security, ex officio or at the request of the trade union or trade unions representing the majority of workers at the enterprise, or if not, of the workers gathered in a general assembly, may, once a strike is called, submit to a ballot by all the workers in the enterprise whether they wish to submit the remaining dispute to arbitration".

In this respect, the Committee notes that the Government has indicated that the Congress of the Republic decided to shelve the above-mentioned Bill and that, in these circumstances, the Ministry of Labour is studying the possibility of submitting to Congress the Labour Statutes referred to in article 53 of the Constitution and to include in it the amendments embodied in the shelved Bill. The Committee therefore stresses the need to amend or repeal with the utmost dispatch the above-mentioned provisions of the Substantive Labour Code in order to bring the legislation into compliance with the Convention. The Committee requests the Government to inform it in its next report on any measures adopted regarding this matter.

Furthermore, the Committee recalls that for a number of years it has been criticizing the legislative provisions concerning:

- the prohibition of strikes, not only in essential services in the strict terms of the term, but also in a very wide range of public services which are not necessarily essential (new section 450(1)(a) of the Code and Decrees Nos. 414 and 437 of 1952; 1543 of 1955; 1593 of 1959; 1167 of 1963, 57 and 534 of 1967);
- the power of the Minister of Labour to refer a dispute to arbitration when a strike lasts over a specific period (section 448)(4) of the Code); and
- the possibility of dismissing trade union officer who have intervened or participated in an unlawful strike (new section 450(2) of the Code), including when the strike is unlawful due to failure to comply with excessive requirements such as those mentioned in the foregoing subparagraphs.

In this respect, in its previous observation the Committee noted that the Government had prepared a preliminary draft of a Bill defining the concept of essential public services, regulating the exercise of the right to strike in such services and containing other provisions for the peaceful settlement of collective labour disputes which would be in greater conformity with the requirements of the Convention and the principles of freedom of association.

While observing that the Government has not mentioned in its report whether the preliminary draft Bill in question has been finally drafted with the aim of presenting it to the Congress of the Republic, the Committee requests the Government to inform it on this matter in its next report.

Costa Rica (ratification: 1960)

The Committee notes the Government's report as well as the information supplied by the Government representative and the debate which took place in the Conference Committee in June 1997 and recalls that its comments concerned the following provisions:

— article 60(2) of the Constitution which prohibits foreigners from holding office or exercising authority in trade unions;

— sections 368 and 369(a), (b) and (c) of the Labour Code (sections 375 and 376 under the new numbering as revised by legislative reforms up to 1996), which prohibit the exercise of the right to strike in the public sector, in the stock-raising and forestry sector and in the rail, maritime and air transport sector.

The Committee notes with interest that in August 1997 the Government submitted to the Legislative Assembly two Bills prepared with ILO technical assistance, to amend article 60, second paragraph, of the Constitution as well as section 369(b) of the Labour Code (section 376(b) under the new numbering as revised by legislative reforms up to 1996) for the purpose of bringing them into conformity as indicated by the Committee.

The first Bill repeals the prohibition on foreigners from holding office or exercising authority in trade unions, and the second repeals the prohibition on the exercise of the right to strike in the stock-raising and forestry sector.

The Committee requests the Government to keep it informed of any progress made regarding the adoption of the two Bills in question and to send it copies of the texts once they have been approved.

The Committee hopes that the Government will continue to make efforts to eliminate from legislation the prohibitions on the right to strike in the public sector (with the possible exception of public servants exercising authority in the name of the State) and in the rail, maritime and air transport sector (now sections 375 and 376 of the Labour Code). The Committee requests the Government to keep it informed of any measures adopted in this respect.

Croatia (ratification: 1991)

The Committee notes the comments made by the Pensioners Trade Union of Croatia (SUH). It also recalls that its previous comments concerned the following:

> *Article 2 of the Convention.* The Committee had noted that section 165 of the new Labour Law provides that a minimum of ten individuals of full age is necessary to establish an employers' association. Considering that this requirement could discourage the persons concerned from constituting organizations of this nature, the Committee had requested the Government to indicate the measures taken or envisaged to amend its legislation to reduce the minimum number set out in the Law for the establishment of employers' associations.
>
> *Article 3.* The Committee had noted that the Union of Autonomous Trade Unions of Croatia had criticized the Law on Associations, particularly as regards its provisions respecting the property and the transfer of the assets of social organizations. The Committee once again requests the Government to transmit its comments in this respect.
>
> Finally, the Committee requests the Government to provide it with a copy of the Law on Civil Servants and Government Employees and on the Salaries of the Officials in Judicial Bodies, as well as any text issued under the new Labour Law under the terms of section 237(1) which relates to freedom of association.

The Committee notes the comments made by SUH to the effect that even though item 1, section 159, of the Labour Law of the Republic of Croatia — paragraph on the "Right of association" — provides that "employees have a right, without any distinction, to found a trade union and to become its member, of their own choice, under conditions which can be stipulated only by the constitution or regulations of this trade union" they have been denied registration on the basis that pensioners are excluded from the scope of this Article. The Committee acknowledges that under *Article 2 of the Convention*, only workers shall have the right to establish and join organizations. However, the Committee points out that pensioners should have the right to join trade unions if the rules of the said unions so provide.

Cyprus (ratification: 1966)

The Committee notes the information provided in the Government's latest reports.

The Committee would recall that its previous comments concerned the need to amend sections 79A and 79B of the Defence Regulations which grant the Council of Ministers discretionary power to ban strikes in any such service which it considers essential. The Committee had recalled that strikes should only be prohibited in essential services in the strict sense of the term, that is, services the interruption of which could endanger the life, personal safety or health of whole or part of the population.

In its latest report, the Government has indicated that the draft legislation regulating the right to strike in essential services is still being examined by the Council of Ministers, that it is aware of the Committee's comments in this respect and that every effort will be made to ensure that the new legislation will be compatible with the requirements of the Convention.

The Committee would recall that it has commented on the restrictions on the right to strike in the Defence Regulations for over ten years now. It therefore trusts that the necessary measures will be taken in the very near future to ensure full conformity with this principle and requests the Government to indicate in its next report the progress made in this regard and to provide a copy of the legislation as soon as it is adopted.

Djibouti (ratification: 1978)

The Committee notes the Government's report received in February 1997. It recalls that its previous observation related to the following points:

The Committee observed with great concern that the Committee on Freedom of Association received two complaints concerning serious violations of freedom of association against the Djibouti Inter-trade Union Association of Labour/General Union of Djibouti Workers (UDT/UGTD) and members of different activity sectors, in particular education (Cases Nos. 1851 and 1922) (see 302nd Report of the Committee, approved by the Governing Body in June 1996). It notes with concern that the Committee, in its 307th Report of June 1997, continues to observe the seriousness of the situation (closure of the UGTD headquarters, freezing of union contributions, dismissals, arrests), the Committee on Freedom of Association urged the Government to take measures to lift immediately the severe penalties imposed on the union organizations and workers following the protest movements against the Government's economic and social policy. In addition, the Committee on Freedom of Association requested the Government to allow a direct contacts mission to visit the country at the earliest possible opportunity.

Furthermore, the Committee recalls that its previous comments also concerned the need to repeal or amend the following provisions:

— section 5 of the Act on Associations, as amended in 1977 to ensure that prior authorization for the establishment of associations may not be imposed for the establishment of trade unions so as to guarantee the application of *Article 2 of the*

Convention under which workers shall have the right to establish organizations of their own choosing without previous authorization;

- section 6 of the Labour Code, which limits the holding of trade union office to Djibouti nationals, in order to allow foreign workers to hold trade union office, at least after a reasonable period of residence in the country, so as to guarantee the application of *Article 3* under which workers' organizations shall have the right to elect their representatives in full freedom;
- section 23 of Decree No. 83-099/PR/FP of 10 September 1983 establishing the conditions governing the right to organize and the right to strike of public servants which confers on the President of the Republic the power to requisition public servants who are indispensable to the life of the nation and to the operation of essential services in order to restrict this power of requisitioning to cases in which, in the Committee's opinion, the restrictions or prohibitions of the exercise of the right to strike are admissible, namely with regard to public servants exercising authority in the name of the State or in essential services in the strict sense of the term, i.e. those the interruption of which would endanger the life, personal safety or health of the whole or part of the population or in the event of an acute national crisis.

The Committee, like the Committee on Freedom of Association, expresses the firm hope that the direct contacts mission will be able to visit the country in the very near future and that the Government's next report will contain detailed information on the measures actually taken to bring national legislation and practice into conformity with the requirements of the Convention. In particular, the Committee urges the Government to restore freedom of association, de facto and *de jure*, as soon as possible.

Ecuador (ratification: 1959)

The Committee notes the Government's report.

The Committee observes that the Government requested the technical assistance of the Office to bring the legislation into conformity with the provisions of the Convention and that a mission visited the country from 4-10 September 1997. The Committee notes that during the mission two Bills were drafted providing for the repeal or amendment of certain legislative provisions criticized by the Committee in its previous observations and direct requests.

The Committee observes that one of the Bills provides:

(1) the amendment of section 59(f) of the Civil Service and Administrative Career Act so that civil servants can establish organizations for the promotion and defence of their occupational and economic interests; and

(2) repeals section 60(g) of the same Act which prohibits civil servants from striking or supporting or participating in strikes, and from establishing trade unions, while it lays down that strikes are prohibited only for civil servants who exercise authority in the name of the State (officials in ministries, the judicial authorities and the armed forces) or who are carrying out essential services within the strict meaning of the term (those the interruption of which would endanger the life, personal safety or health of the whole or part of the population).

The Committee observes that the other Bill provides:

- an addition to section 441 of the Labour Code to the effect that in the event of refusal of registration, the occupational trade union in question may appeal to the competent judicial authorities for the merits of the case to be examined as well as the reasons for the measure being taken;

- section 443(11) is amended to the effect that organizations of a higher level enjoy the right to express their opinions on the Government's economic and social policies in a peaceful manner but shall not intervene in purely party, political or religious activities unconnected with their function of promoting and defending the interests of their members, nor shall they oblige their members to intervene in them;
- adding a second paragraph to the end of section 455 providing that in the event of refusal of registration, the works committee in question shall be able to appeal to the competent judicial authorities for the purpose of having the merits of the question examined along with the reasons for the measure;
- the deletion from section 455 of paragraph (4) concerning the requirement to be Ecuadorean in order to serve as a trade union official;
- the amendment of section 461 on the dissolution by administrative measures of a works committee in order to grant to the workers' or employers' organizations concerned or the Ministry of Labour the right to appeal to the judicial authorities in order to request dissolution of the committee;
- the amendment of section 69 of Act No. 133 on minimum services in the event of strike (introduced into the Labour Code following section 503) providing that in the absence of agreement, the measures for the provision of minimum services will be laid down by the Ministry of Labour through the General Labour Directorate or the relevant subdirectorate in consultation with the workers' and employers' organizations in the sector; and
- the repeal of Decree No. 105 of 7 June 1967 on unlawful work stoppages and strikes for which prison sentences can be imposed on the instigators of collective work stoppages and on those taking part in them.

In addition, the Committee recalls that for many years it has been referring to the following matters:

- the need to reduce the minimum number of workers (30) needed to be able to establish associations, works committees or assemblies in order to organize works committees (sections 439, 455 and 448 of the Labour Code). Although the minimum number of 30 workers would be admissible for industrial trade unions, the Committee considers that the minimum number should be reduced for works trade unions in order not to hinder the establishment of such organizations, particularly in view of the very large proportion of small enterprises in the country;
- the need for civilian workers in bodies associated with or dependent on the armed forces, particularly workers in the maritime transport sector of Ecuador, to enjoy the right to join trade unions of their choice and for the Union of Ecuadorean Shipping Transport Workers (TRASNAVE) to be registered with the utmost dispatch (Case No. 1664 of the Committee on Freedom of Association);
- the deprival of the guarantee of stability to workers who take part in a solidarity strike (section 65 of Act No. 133, including following section 498 of the Labour Code); and
- the implicit refusal of the right to strike for federations and confederations (section 491 of the Labour Code).

The Committee observes that in its report the Government indicates that the draft legislative reforms transmitted to Congress in 1989 have been reactivated and that for this purpose the Ministry of Labour has transmitted them to the President of the Congress under cover of Communication No. 098-AIT-97 of September 1997.

The Committee is surprised that the Government does not mention in its report the Bills drafted during the recent ILO technical assistance mission. In these circumstances, the Committee is therefore bound to insist that the Government take the necessary measures with the utmost dispatch in order to bring the legislation and practice into conformity with the Convention. The Committee expresses the strong hope that the Government will supply information in its next report on all progress made in relation to the questions which have been raised for many years.

[The Government is asked to supply full particulars to the Conference at its 86th Session.]

Ethiopia (ratification: 1963)

The Committee notes with serious concern the grave allegations of violations of trade union rights brought before the Committee on Freedom of Association in Cases Nos. 1888 and 1908 (see 308th Report of the Committee on Freedom of Association approved by the Governing Body at its 270th Session (November 1997)).

Articles 2 and 10. Noting that section 3(2)(b) of Labour Proclamation No. 42-1993 excludes teachers from its scope of application, the Committee asks the Government to indicate how teachers' associations can promote their occupational interests.

Noting further that a new law to govern employees of state administration, judges, prosecutors and others was expected to be in effect in the near future, the Committee requests the Government to provide information in its next report on any progress made in the adoption of this draft legislation so as to ensure that these categories of employees enjoy the right to establish and join organizations for the promotion of their occupational interests.

Article 3. (Right of workers to elect their representatives). The Committee notes that these cases concern, in particular, the forced removal of elected trade union leaders of the Federation of Commerce, Technical and Printing Industry Trade Unions (FCTP) and of the Ethiopian Teachers' Association (ETA). In this regard, the Committee recalls that the removal of trade union leaders and the nomination by the administrative authorities of members of the executive committees of trade unions constitutes a violation of *Article 3 of the Convention*. Noting that the Government has appealed a judgement rendered by the Court of Ethiopia upholding the claims made by ETA's elected leadership that they represent Ethiopian teachers, the Committee requests the Government to provide a copy of the higher court judgement as soon as it is handed down.

Article 4. The Committee notes with concern that the Ministry of Labour has cancelled the registration of the former Confederation of Ethiopian Trade Unions (CETU) and observes that the Federal High Court has confirmed the decision of the Ministry. The Committee requests the Government to send a copy of the Court decision in this matter.

France (ratification: 1951)

The Committee notes the information contained in the Government's report in reply to the comments made by the French Democratic Confederation of Labour (CFDT) concerning the difficulties trade union organizations have in respect of their establishment and activities in small and medium-sized enterprises.

The Committee notes in particular the information supplied by the Government in its report to the effect that the Labour Code authorizes representative trade unions to establish a trade union section in all enterprises, whatever the nature of their activities, their legal constitution or number of workers and that this faculty is not subject to any formal condition. The Committee also notes the Government's statement according to which section 6 of Act No. 96-985 of 12 November 1996, endorsed by the Constitutional Council, permits collective bargaining to be conducted in enterprises having no trade union delegates and in enterprises of fewer than 50 employees having no staff delegates acting as trade union delegates, either by elected representatives or by one or more mandated employees. The Committee notes, finally, that according to the information supplied in the Government's report, the Court of Cassation has already allowed that in enterprises where the legal conditions for designating a trade union delegate are not met, industrial agreements may be negotiated and signed by employees holding a mandate given by a representative trade union.

In the present state of information, the Committee considers that the legislation and jurisprudence provided by the Government do not appear to contravene *Article 11 of the Convention*.

Guinea (ratification: 1959)

Referring to its previous comments concerning sections 342 and 351 of the Labour Code respecting the right to strike in essential services, which provide inter alia that the arbitration procedure may be implemented at the request either of a party to a dispute, or of a minister if he considers that a strike occurring in an essential service or during a period of national difficulty is likely to be prejudicial to public order or to the general interest, the Committee notes with interest the content of Order No. 5680/MTASE/DNTLS/95 of 24 October 1995 which defines and determines essential services in the context of the right to strike. The Committee observes that according to the Order, essential services are "those which if interrupted may endanger the lives, freedom, safety or health of individuals", and that the list provided corresponds partly to the principles of freedom of association. The Committee also observes that essential services imply the provision of a minimum service negotiated by an employer and his workers.

Observing that public transport and communication, which do not in itself constitute an essential service, appear on the list contained in the Order, the Committee requests the Government to indicate, should the parties not manage to reach an agreement, the measures envisaged for a joint or independent body to examine rapidly and without formalities the difficulties raised by the definition of a minimum service (see General Survey on freedom of association and collective bargaining, 1994, paragraph 161).

In addition, the Committee recalls that arbitration at the request of one of the parties, in this case the employer, is likely to restrict the exercise of the right to strike, contrary to *Article 3 of the Convention*. The Committee requests the Government to take measures in order to ensure that arbitration cannot be imposed at the request of only one of the parties to a dispute.

The Committee also requests the Government to continue to provide, in its future reports, information on the application in practice of sections 342, 350 and 351 of the Labour Code and Order No. 5680/MTASE/DNTLS/95 of 24 October 1995 which defines and determines essential services in the context of the right to strike.

Jamaica (ratification: 1962)

The Committee notes the information contained in the Government's report. It recalls that it has been commenting for several years now on the necessity to amend sections 9 and 10, paragraphs 1, 2, 4, 5 and 8 of the Labour Relations and Industrial Disputes Act No. 14 of 1975, as amended in 1978, which empower the Minister to submit industrial disputes to compulsory arbitration and hence to terminate any strike in cases of essential services which, in the Committee's view, are too broadly defined in the legislation and where a dispute is likely to be "gravely injurious to the national interest".

In its latest report, the Government indicates that it is in the process of re-examining the legislation and that instructions have already been given to eliminate those services on the list of essential services which cannot be defined as essential in the strictest sense of the term. A tripartite Labour Advisory Committee has been established and a number of amendments to the Act have been proposed, submitted to Cabinet and further referred to the Chief Parliamentary Counsel with drafting instructions.

With regard to the power of the Minister to refer an industrial dispute to compulsory arbitration, the Government indicates that there is scope in the Act for such a decision being overturned in Parliament and that section 10, which provides for such referral where a dispute is likely to be gravely injurious to the national interest, has not been used in the last two decades and, prior to 1978, was only used twice. It adds that the rationale for this section flows entirely from considerations of national interest and is not intended to deprive workers and employers of their rights to freedom of association.

The Committee would once again recall that the wording of section 10 can be broadly interpreted in such a way as to permit the use of compulsory arbitration in situations other than those involving essential services or in acute national crises. It therefore hopes that, along with the proposals made to restrict the sectors covered by the term "essential services", measures will be taken to amend this section so that the imposition of compulsory arbitration be clearly limited to essential services or acute national crises; otherwise, recourse to compulsory arbitration may only occur at the request of the two parties concerned in the dispute. Given that the Government has been indicating for several years now that the Labour Relations and Industrial Disputes Act is undergoing review, the Committee trusts that the Government will be able to indicate in its next report the progress made in bringing this Act into conformity with the principles of freedom of association and requests the Government to furnish a copy of any proposed or adopted amending text in this regard. Furthermore, the Government is requested to continue to indicate whether section 10 is used in the future and, if so, under what circumstances.

Liberia (ratification: 1962)

The Committee notes with regret that for the eighth year in succession the Government has been unable to reply to its previous comments. It must therefore repeat its previous observation which read as follows:

> The Committee notes that there has been no change in the legislative situation, which has been the subject of its comments for many years.
>
> The Committee recalls the need to amend or repeal Decree No. 12 of 30 June 1980 which prohibits strikes, section 4601-A of the Labour Practices Law which prohibits agricultural workers from joining industrial workers' organizations, and section 4102, subsections 10 and 11, of the Labour Practices Law which provides for the supervision of trade union elections by the Labour Practices Review Board. The Committee observes that these provisions are still in force and that they are contrary to ***Articles 2, 3, 5 and 10 of the Convention***.
>
> Furthermore, the Committee recalls that the right to associate of workers in state enterprises and the public service is still not recognized in the national legislation, despite the

Government's assurances in previous reports that the Civil Service Act was to be amended in order to give statutory effect to the right of the workers in this sector to establish and join organizations of their own choosing, in accordance with *Article 2 of the Convention*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Myanmar (ratification: 1955)

The Committee notes the statement made by the Government representative to the Conference Committee in 1997, as well as the discussion which took place therein and the resulting special paragraph in the Conference Committee's report for continued failure to implement the Convention. It must once again express its profound regret that it has not received a report from the Government, despite the fact that the Conference Committee, in its conclusions, had urged the Government to supply a detailed report to the Office. It notes with particularly grave concern that the most recent Government report was received over three years ago.

In these circumstances, the Committee cannot but note with the deepest regret that it has been commenting upon the continued failure to apply this Convention, both in law and in practice, for over 40 years now. In its previous comments, the Committee had urged the Government, in particular, to adopt the measures necessary to ensure the right of workers to establish, without previous authorization, and to join, subject only to the rules of the organization concerned, first-level unions, federations and confederations of their own choosing for the furtherance and defence of their interests and to ensure the right of first-level unions, of federations and of confederations to affiliate freely with international organizations (*Articles 2, 5 and 6 of the Convention)*. As no information whatsoever has been communicated to the Office in this regard, the Committee must once again urge the Government to adopt, as a matter of urgency, the necessary measures to ensure fully the right to organize, and the right to affiliate with international organizations, without impediment.

[The Government is asked to supply full particulars to the Conference at its 86th Session.]

Namibia (ratification: 1994)

In its previous comments, the Committee had noted with concern that section 8(1) of the Export Processing Zones Act, 1995 (Act No. 9 of 1995) stipulated that the provisions of the Labour Act did not apply in an export processing zone (EPZ) and requested the Government to take appropriate steps to amend Act No. 9 so as to ensure the application of the Labour Act in EPZs.

In this regard, the Committee notes with interest the adoption of the Export Processing Zones Amendment Act, 1996, which provides that the Labour Act shall be applicable in an export processing zone, subject to certain modifications and exceptions. The Committee must, however, note with concern that the EPZ Amendment Act prohibits any employee from taking action by way of, or participating in, a strike in an export processing zone. In this respect, the Committee would draw the Government's attention to paragraph 169 of its 1994 General Survey on freedom of association and collective bargaining in which it has indicated that the prohibition of strikes in export processing zones is incompatible with the provisions of the Convention, which provide that all workers, without distinction whatsoever, shall have the right to establish organizations of their own choosing and that such organizations shall have the right to organize their activities and to formulate their programmes without interference by the public authorities (*Articles 2 and 3 of the Convention*).

The Committee therefore requests the Government to take appropriate steps to further amend the Export Processing Zones Act so as to ensure that workers in export processing zones, like other workers in the country, are not denied the right to strike and requests the Government to indicate in its next report the progress made in this regard.

Niger (ratification: 1961)

The Committee notes the conclusions of the Committee on Freedom of Association concerning Case No. 1921 (see 308th Report, paragraphs 556-576).

Article 4 of the Convention (dissolution by administrative authority). The Committee notes with concern that the Government dissolved by administrative authority the National Trade Union of Customs Officials of Niger (SNAD) on 20 March 1997 as the result of a strike the union had declared in order to obtain a reimbursement of wage arrears. In this regard, the Committee recalls that, under *Article 4 of the Convention*, trade unions shall not be liable to be dissolved by administrative authority. The Committee therefore urges the Government to indicate whether the SNAD has been re-established since that time in accordance with its rights.

Articles 3 and 10 (rights of workers' organizations to strike in defence of their economic, social and professional interests). The Committee notes that for state employees the exercise of the right to strike is governed by Order No. 96-009 of 21 March 1996, section 9 of which provides that in vital and/or strategic services, a minimum service must be provided on the basis of agreement between the authorities and trade unions, but also in accordance with the application of the Convention. However, section 9 also provides that in exceptional cases arising as a result of the need to preserve the general interest, all state employees, or those of territorial authorities, may be requisitioned. In the view of the Committee, the scope of this provision should be restricted only to cases in which a work stoppage may give rise to an acute national crisis or to public servants exercising authority in the name of the State, or also to essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see 1994 General Survey on freedom of association and collective bargaining, paragraphs 158 and 163). The Committee requests the Government to indicate in its next report the measures taken or envisaged to guarantee, in law and in practice, respect for the principles of freedom of association in this regard. It also requests the Government to provide it, in future, with copies of the requisition orders adopted in case of strikes.

Nigeria (ratification: 1960)

The Committee notes the statement made by the Government representative to the Conference Committee on the Application of Standards in June 1997, the additional information provided by the Government to the Committee, the discussion which followed and the resulting special paragraph in the Conference Committee's report for continued failure to implement the Convention. The Committee further notes with deep regret from the examination of Case No. 1793 by the Committee on Freedom of Association in its 308th Report (approved by the Governing Body at its 270th Session (November 1997)), that the Government has not yet accepted the suggestion of a direct contacts mission. Finally, the Committee notes with regret that it has not received any report from the

Government on the application of the Convention, despite the request made by the Conference Committee in this respect.

I. *Article 2: The right to organize for academic staff unions and associations.* In its previous comments, the Committee noted with deep concern that the Trade Disputes (Essential Services Deregulation, Proscription and Prohibition from Participation in Trade Union Activities) Decree and the Trade Disputes (Essential Services) (Proscription) Order 1996 of 21 August 1996 proscribed and prohibited the participation in any trade union activities of the Non-Academic Staff Union of Educational and Associated Institutions (NASU), the Academic Staff Union of Universities and the Senior Staff Association of Universities, Teaching Hospitals, Research Institutes and Associated Institutions and dissolved the National Executive Council and the Branch Executive Councils operating within any university in Nigeria in contravention of *Articles 2 and 4 of the Convention*. The Committee notes the Government's indication that the above-mentioned Order was the result of the protracted closure of Nigerian universities for a period over six months and the refusal of the unions to settle the dispute which precipitated a national crisis contrary to *Article 8 of the Convention*.

While noting the Government's indication that trade union recognition has been restored to NASU by Decree No. 26 of 1996, it would appear that the Government is merely referring to the fact that NASU is included in the list of 29 restructured trade unions affiliated to the Central Labour Organization. The Committee is not however aware of any subsequent decree repealing the Proscription Order of 1996 which prohibited the trade union activities of three university unions. The Committee therefore requests the Government to take the necessary measures to repeal this Order so as to guarantee the right to organize and to carry out trade union activities of the three above-mentioned unions.

II. *Article 2: The right to establish and join the organization of one's own choosing and to be protected from administrative dissolution.* As concerns the restructuring of the previous 41 registered industrial unions into 29 trade unions affiliated to the Central Labour Organization (named in the law as the Nigerian Labour Congress (NLC)) through the promulgation of the Trade Unions (Amendment) Decree No. 4 of 5 January 1996, the Committee notes the Government's emphasis on the fact that these measures were taken in response to a voluntary request by the NLC. Observing that this Decree provides for the establishment of a determined number of trade unions for each occupational category according to a pre-established list further confirming the system of trade union monopoly, the Committee recalls that the organization having made this request has been run by a government-appointed administrator since 1994. In this regard, the Committee recalls that *Article 2 of the Convention* provides that workers and employers shall have the right to establish and join organizations of their own choosing. The Committee therefore requests the Government to take the necessary measures to amend its legislation in order to apply fully *Article 2 of the Convention*.

III. *Article 3: Conditions of eligibility.* As concerns the requirement that officers of a trade union be card-carrying members which in turn must be engaged in the trade or industry which the union represents under punishment of a fine and/or five years' imprisonment (sections 7 and 8 of Decree No. 26), the Committee would recall that provisions requiring members of trade unions to belong to the occupation concerned coupled with a requirement that the officers of the organization be chosen from among its members entails a serious risk of interference by the employer through the dismissal of trade union officers in order to deprive them of their trade union office and is not in conformity with the organization's right to elect representatives in full freedom as it prevents qualified persons, such as full-time union officers or pensioners, from carrying out union duties or by depriving unions of the benefit of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks (see 1994 General Survey on freedom of association, paragraph 117). The Committee therefore requests the Government to amend these provisions either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization.

IV. *Article 4: Dissolution or suspension by administrative authorities.* The Committee cannot but note with the deepest concern that Decrees Nos. 9 and 10 of August 1994 dissolving the executive councils of the Nigerian Labour Congress (NLC) and of the National Union of Petroleum and Natural Gas Workers (NUPENG) and the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) respectively have not been repealed and that these unions, after over three years now, are still being run by a single administrator appointed by the Government. It urges the Government to take the necessary measures immediately to bring the law and practice into conformity with the provisions of the Convention, particularly by repealing the above-mentioned Decrees, and to re-establish for workers' and employers' organizations the right to organize and the right to elect representatives in full freedom, without interference by the public authorities.

As concerns section 8 of Decree No. 4 of 1996 which provides that "no question as to the validity of any act taken by any person or authority in pursuance of this Act shall be entertained by any court of law or tribunal in Nigeria", the Committee notes the Government's indication that, within the context of the Nigerian Constitution and the on-going transition to the civil rule programme of the federal Government, the provisions of this Decree arise from the need to create an enabling environment for public safety, order and morality that would engender resilient and lasting industrial peace and harmony in the country and assist the successful prosecution of the on-going democratization programme in Nigeria. The Committee further notes that section 3 of Decree No. 26 of 16 October 1996 also amends the Trade Unions Act so as to make any decisions to cancel registration only appealable to the Minister. This gives rise to particular concern when read with the further amendments in this Decree which provide that the Minister may, due to overriding public interest, revoke the certificate of registration of any trade union specified in the Schedule to the Act (section 3) and under section 7, may revoke registration in the event that a non-card-carrying member assumes a functional role in any of the policy or decision-making organs.

Recalling that according to *Article 4 of the Convention*, workers and employers should not be liable to dissolution by administrative authorities, the Committee requests the Government to amend both Decrees Nos. 4 and 26 by repealing the powers of the Minister to dissolve organizations and by enabling workers and their organizations to appeal to the courts concerning any cancellation or denial of registration.

Regarding the omission of 25 previously registered and recognized trade unions of senior staff and ten employers' associations from the list of registered organizations, the Committee notes the Government's indication that the list established in the Third Schedule of Decree No. 4 refers only to the organizations affiliated to the NLC and does not in any way affect the registration of the senior staff associations or of the employers' associations.

V. *Article 5: International affiliation.* The Committee notes with regret the adoption of the Trade Unions (International Affiliation) Decree No. 29 of 1996 which, similar to the previous Decree of 1989, annuls the international affiliation of the Central Labour Organization and all registered trade unions with any international labour organization or trade secretariat other than the Organization of African Trade Union Unity, the Organization of Trade Unions for West Africa and any other international labour organization for which a specific application has been made and approval given by the Provisional Ruling Council. Any subsequent international affiliation is therefore subject to prior approval. Furthermore, any contravention of this Decree may be punishable by up to five years' imprisonment and the certificate of registration of the offending trade union shall be revoked. The Committee recalls in this regard that international solidarity of workers and employers requires that their national federations and confederations be able to group together and act freely at the international level; a right provided for under *Articles 5 and 6 of the Convention* (see 1994 General Survey, paragraph 198). The Committee therefore requests the Government to take the necessary measures to amend the legislation so as to ensure that workers' organizations have the right to affiliate with the international organization of their own choosing without prior authorization.

[The Government is asked to supply full particulars to the Conference Committee at its 86th Session.]

Norway (ratification: 1949)

The Committee notes the observations made by the Federation of Oil Workers' Trade Union (OFS) and the Confederation of Norwegian Business Industry.

Articles 3 and 10 of the Convention. In its previous observation, the Committee had commented upon the need to remove the restrictions imposed on the right to strike in the oil industry through the imposition of compulsory arbitration and noted the Government's indication that the Labour Law Council was working on a proposal for a new labour disputes Act. The Committee expressed its hope that the Bill to be proposed would be in full conformity with the principles of freedom of association and would remove any restrictions imposed on the right of workers' organizations to organize their activities and formulate their programmes for furthering and defending their interests, without interference from the public authorities, through the use of compulsory arbitration.

The Committee notes that, according to the OFS, the suggestions made by the Labour Council entitled "Principles for a new Labour Disputes Act" are in contradiction with the principles of the Convention. The Committee asks the Government to reply to the comments made by the OFS in this regard and to provide information, in its next report, on any further developments in respect of the proposals made by the Labour Law Council.

Pakistan (ratification: 1951)

I. The Committee notes the information provided by the Government in its report which merely repeats precisely the information provided in its previous report. It also takes note of the comments made by the Pakistan Workers' Confederation (PWC) and the All Pakistan Federation of Trade Unions (APFTU).

1. As regards the Pakistan Television and Broadcasting Corporations (PTVC and PBC), the Committee notes with interest from information provided by the APFTU that the Supreme Court has rendered a judgement dated 2 July 1997 restoring the right to organize and to bargain collectively for employees of the Pakistan Television Corporation and of the Civil Aviation Authority. Apparently, however, the Court indicated that, in the absence of statutory backing, these employees would not have the right to strike or

participate in go-slows and that the Government could provide reasonable restrictions in this respect through statutory rules under section 26 of the Industrial Relations Ordinance (IRO). While welcoming the decision of the Supreme Court concerning the right to organize for these workers, the Committee would recall that the right to strike may only be restricted in respect of essential services, that is services the interruption of which would endanger the life, personal safety or health of whole or part of the population, and in cases of acute national crisis. The Government may consider however in this regard the establishment, in consultation with the workers' organizations concerned, of a negotiated minimum service to meet basic needs or to ensure that facilities are operated safely. Furthermore, noting that these workers are excluded from the IRO and noting the indication in the Government's report that the recommendations of the tripartite task force on labour to restore trade union rights to PTVC and PBC employees were still being considered, the Committee expresses the firm hope that the Government will take the necessary measures to bring its legislation into conformity with the Supreme Court judgement as concerns the right to organize of these workers and to ensure that they are not prohibited from exercising the right to strike. It requests the Government to provide a copy of the Supreme Court judgement in this matter and to indicate the measures taken to ensure that these workers enjoy full rights under the Convention.

2. The Committee notes the comments made by the PWC according to which amendments have been made to the Banks (Special Courts) Ordinance, 1986, wherein section 27-B would now provide that a worker shall not be entitled to become a member or officer of any union in a banking company if he or she is not an employee of the bank in question. The Committee had noted from a communication received from the Government in this regard, that the purpose of the amendment in the banking companies Ordinance was to control disruptive activities of disgruntled elements in the interest of the economy. The amendment in no case contains workers' rights of association and collective bargaining; the workers are free to bargain with the management. The Government has, however, held meetings with workers' representatives at the highest levels to redress their genuine grievances and to meet their valid demands. In this regard, the Committee would draw the Government's attention to paragraph 117 of its General Survey of 1994 on freedom of association and collective bargaining wherein it indicates that provisions which require all candidates for trade union office to belong to the respective occupation, enterprise or production are contrary to the guarantees set forth in *Article 3 of the Convention* and infringe the organization's right to elect representatives in full freedom by preventing qualified persons, such as full-time union officers or pensioners, from carrying out union duties or by depriving unions of the benefit of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks. The Committee suggests in this respect that the legislation may be made more flexible either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization. The Committee requests the Government to indicate, in its next report, the measures taken or envisaged to further amend this legislation so as to ensure that workers have the right to elect their representatives in full freedom along the lines mentioned above.

II. The Committee recalls that its previous observations referred also to the following discrepancies between national legislation and the Convention:

- denial of the rights guaranteed by the Convention for workers in export processing zones (section 25 of the Export Processing Zones Authority Ordinance, 1980, and section 4 of the Export Processing Zones (Control of Employment) Rules, 1982);

- exclusion of public servants of Grade 16 and above from the scope of the Industrial Relations Ordinance (IRO), 1969 (section 2(viii) (special provision)); restrictions on recourse to strikes (sections 32(2) and 33(1) of the Ordinance);
- denial to minority unions from representing their members in relation to individual grievances;
- exclusion from the definition of workers in the IRO, and thus of the right to join a trade union, of persons employed in an administrative or managerial capacity whose wages exceed 800 rupees per month (when the national minimum wage was fixed at 1,500 in 1995);
- artificial promotions used as an anti-union tactic in the banking and finance sector;
- denial of the right to form trade unions for employees in public and private sector hospitals; and
- denial of the right to organize of forestry workers and railway employees.

As concerns the Pakistan Essential Services (Maintenance) Act, 1952, the Committee had noted in its previous comments the Government's statement to the 1996 Conference Committee that the list of services prohibited from strike by virtue of this Act had been reduced to eight. The Government added that recommendations made by the national tripartite task force on labour to delete certain other services from the list were submitted to the Cabinet for approval. Noting with concern that, by virtue of section 7 of the Essential Services Act, any person working in a service deemed to be essential under the Act who participates in a strike shall be liable to up to one-year's imprisonment, the Committee requests the Government to provide with its next report the list of services presently covered by the Essential Services (Maintenance) Act and to indicate any developments with respect to the task force recommendations to further restrict this list.

Given that the Government has provided no new information on these matters for several years, the Committee, recalling that a direct contacts mission took place in January 1994 between a representative of the Director-General and the Government and that a national tripartite task force was established at that time with a wide mandate on labour and industrial relations issues, urges the Government to ensure that substantial progress is made in ensuring that its national legislation and practice are brought into conformity with the requirements of the Convention in the very near future, taking into consideration the recommendations of the direct contacts mission, and to provide detailed information in this regard in its next report.

Panama (ratification: 1958)

The Committee notes the information supplied by the Government in its report and confirms that it indicates that it will send a response to the questions raised by the Committee in its previous observation at a later date. The Committee recalls that its previous comments referred to the following provisions:

- section 174 and the last paragraph of section 178 of Act No. 9 ("establishing and regulating administrative careers") of 1994, which established that there shall be not more than one association in an institution and that the associations may have provincial or regional offices but not more than one office per province respectively;
- section 41 of Act No. 44 of 1995 (amending section No. 344 of the Labour Code) which requires an excessively high number of members in order to establish an occupational employers' organization (ten) and an even higher number to establish a workers' organization at enterprise level (40).

As regards the fact that it is impossible for there to be more than one public servants' association in an institution, or more than one office per province (section 174 and the last paragraph of section 178 of Act No. 9 of 1994), the Committee reiterates that any system of single trade union organization or monopoly imposed directly or indirectly by the law runs counter to the principle of free establishment of organizations of workers and employers set forth in *Article 2 of the Convention*. The Committee once again reminds the Government that although it was clearly not the purpose of the Convention to make trade union diversity an obligation, it does at the very least require this diversity to remain possible in all cases. There is a fundamental difference between, on the one hand, a trade union monopoly established or maintained by law and, on the other hand, voluntary groupings of workers or unions which occur (without pressure from the public authorities, or due to the law) because they wish, for instance, to strengthen their bargaining position, or to coordinate their efforts to tackle ad hoc difficulties which affect all their organizations (see 1994 General Survey on freedom of association and collective bargaining, paragraph 91).

As regards the number of members required to establish an employers' and workers' occupational organization (section 41 of Act No. 44, amending section 344 of the Labour Code), the Committee once again requests the Government to reduce the number of members (ten) required to establish an employers' organization and to reduce even further the minimum number of 40 workers required to establish a trade union organization at enterprise level.

The Committee hopes once again that the Government will continue to make efforts to bring the legislation into full conformity with the provisions of the Convention, and requests the Government to keep it informed of any progress made in this respect.

The Committee is also addressing a request directly to the Government relating to certain matters.

Paraguay (ratification: 1962)

The Committee notes the Government's report and Act No. 496 of 25 August 1995 which amends, extends and repeals various provisions of the existing Labour Code (Act No. 213/93) and recalls that its previous comments referred to:

- the exclusion from the scope of the new Labour Code, 1993, of public servants, be they from the central administration or from decentralized units (section 2 of the Code);
- the requirement of 300 workers as the minimum number to form a trade union (section 292);
- the requirement of being an active worker in the enterprise and an active worker of the trade union in order to be eligible for trade union office (sections 298(a) and 293(d), respectively);
- the restriction on the free election of trade union representatives (Decree No. 16769, which contains detailed and meticulous regulation of the trade union electoral process);
- the referral of collective disputes to compulsory arbitration and the dismissal of workers who have stopped work before the conciliation and compulsory arbitration procedures have been exhausted (sections 284, 291, 293, 302 and 308 of the Code of Labour Procedure).

With regard to the exclusion from the scope of the Labour Code, 1993, of public servants, the Committee notes with interest that section 412 (transitional provision) of Act

No. 496 of 25 August 1995 extends application of the Labour Code provisions relating to the right to form trade unions and to strike to workers in the public sector until such time as a special law governs the subject. Similarly it notes with interest that the Bill on the Status of Civil Servants and Public Employees, section 44(m) and (n), allows civil servants and public employees to form trade unions and to participate in strikes with the restrictions laid down in the Constitution and by the law, respectively, in accordance with article 45(d), (e) and (f), and that the National Constitution and the Labour Code will regulate matters pertaining to the right to form trade unions, to conclude collective labour agreements and to the right to strike and that section of the Labour Code amended in 1995 abrogates Act No. 200 on the status of public officials, sections 31 and 36 of which allowed public servants to form associations only for cultural and social purposes.

The Committee expresses the firm hope that in the near future the Act on the Status of Civil Servants and Public Employees will be approved allowing public servants to form associations for the promotion and defence of their professional interests in accordance with *Article 2 of the Convention*.

With regard to Decree No. 16769 which restricts free election of trade union representatives and was declared unconstitutional by the Supreme Court, as it is contrary to article 96 of the National Constitution and is therefore null and void, the Committee again asks the Government to inform it on the adoption of any text expressly repealing this instrument.

In regard to sections 284, 291, 293, 302 and 308 of the Code of Labour Procedure which refers collective disputes to compulsory arbitration and provides for the dismissal of workers who have stopped work before the conciliation and compulsory arbitration procedures have been exhausted, the Committee also notes with interest that, according to information from the Government, first, sections 284 and 291 are no longer applicable since they are contrary to article 97 of the National Constitution which lays down arbitration as optional. Secondly, it also notes with interest that according to the Government's report, sections 293, 302 and 308 of the Code, relating to conciliation and arbitration procedures, apply only when the parties have opted for arbitration; otherwise they are not valid since their application would be unconstitutional as arbitration is voluntary. The Committee requests the Government to inform it also on the adoption of any text repealing or amending these provisions.

The Committee regrets to note that the Government has not replied to its comments on section 292 of the Code relating to the requirement of 300 workers as the minimum number to form a trade union, nor on articles 298(a) and 293(d) of the Code on the requirement of being an active worker in the enterprise and an active member of the trade union in order to be eligible for trade union office, respectively, and it therefore once again asks the Government, in consultation with workers and management, to take measures to amend legislation in order to reduce to a reasonable level the excessive number of workers required to form a trade union and to allow workers to elect their leaders freely. On this matter, the Committee reminds the Government that provisions which require all candidates for trade union office to belong to the occupation, enterprise, or production unit represented by the organization or to be actually employed in this occupation at the time of their candidature are contrary to the guarantees laid down in the Convention (see General Survey on freedom of association and collective bargaining, 1994, paragraph 117).

The Committee again asks the Government to inform it in its next report of the measures adopted to bring legislation into conformity with the Convention and of progress in the approval of the Act on the Status of Civil Servants and Public Employees mentioned by the Government and to send it a copy of the new law once it is approved.

The Committee is also addressing a direct request on certain points to the Government.

Peru (ratification: 1960)

The Committee notes the information supplied by the Government to the Committee on Freedom of Association relating to Case No. 1796 (306th report, paragraph 503, approved by the Governing Body at its 268th Session, March 1997), and recalls that its previous comments referred to several provisions of the Industrial Relations Act of 1992 and its Regulations, namely:

- denial of trade union membership during the work probation period (section 12(c) of the Act);
- the requirement of a high number of workers (100) to form trade unions by branch of activity, occupation, or for various occupations (section 14);
- the requirement that, in order to be eligible for trade union office (section 24), workers must be active members of the union (section 24(b)), and must have been in the service of the enterprise for at least one year (section 24(c));
- the ban placed on trade unions from engaging in political activities (section 11(a));
- the excessive restrictions on the right to strike, in particular sections 73(a) and (b), 67 and 83(g) and (j);
- the obligation placed on trade unions to compile the reports which may be requested from them by the labour authorities (section 10(f));
- the power of the labour authority to cancel the registration of a union (section 20 of the Act), and the requirement that the union must wait six months after the cause of the cancellation has been remedied before reapplying for registration (section 24 of the Regulations);
- the prohibition placed on public servants' federations and confederations from affiliating with organizations that represent other categories of workers (section 19 of Presidential Decree No. 003-82-PCM).

The Committee notes that the Chairman of the Labour and Social Security Committee of the National Congress has drafted an Industrial Relations Bill. The Committee notes with interest that the Bill amends most of the above provisions to take account of the Committee's comments:

- section 12(c) of the Act, denying trade union membership during the work probation period is deleted;
- under section 7 of the Bill, the number of workers required to form trade unions by branch of activity, occupation, or for various occupations (section 14 of the Act) is reduced from 100 to 50;
- the requirements that, to be eligible for trade union office (section 24 of the Act), workers must be active members of the union (section 24(b)) and must have been in the service of the enterprise for at least one year (section 24(c)) are abolished;
- as for the ban placed on trade unions from engaging in political activities (section 11(b) *of the Act*), section 12(a) of the Bill improves the text by adding "*without impairment of freedom of opinion as to the social and economic policy of the Government*" thus removing the restriction of the right to strike established in section 73(a) of the Act;

- section 67 of the Act, concerning compulsory arbitration in public services, *is deleted*; as for section 83(g) of the Act, regarding the treatment of *transport* as an essential public service, section 80(g) of the Bill *limits the application of the law to the simple requirement of finishing the journey begun*; section 83(j) of the Act concerning the treatment as essential public services those services whose interruption creates a serious or imminent risk for persons or *goods, is deleted*;
- the labour authority's supervision of trade union activities (section 10(f) of the Act) *is abolished*; and
- the power of the labour authority to cancel the registration of a union (section 20 of the Act) *is abolished*.

However, the Bill has not taken account of some of the Committee's comments and contains provisions which might give rise to difficulties in complying with the Convention, namely:

- the restrictions on the right to strike constituted by the requirement that *the decision must be adopted by an absolute majority of the workers* (sections 74(b)(i) and 75 of the Bill); and in particular the requirement that the strike declaration be communicated to the employer and the labour authority together with the record of the vote *with the names and signatures of the workers attending* (74(c)(i));
- the Bill does not envisage the possibility of federations and confederations of public servants becoming affiliated to confederations which also include private sector organizations (see 1994 General Survey on freedom of association and collective bargaining, paragraph 193).

The Committee expresses the firm hope that the Industrial Relations Bill will take account of all the Committee's comments and that it will be adopted in the very near future. The Committee asks the Government to provide information in its next report on progress made in this respect and to send a copy of the text once it has been adopted.

The Committee is also addressing a direct request to the Government.

Portugal (ratification: 1977)

The Committee recalls that its previous comments referred to the need to bring the following provisions of the national legislation into conformity with the Convention and national practice, since they require too high a number of workers and employers in order to form occupational organizations:

- section 8(2) and (3) of Legislative Decree No. 215/B/75 which requires 10 per cent or 2,000 workers to establish a trade union, and one-third of the trade unions of a region or category (respectively) to establish a federation; and
- section 7(2) and (3) of Legislative Decree No. 215/C/75, which requires one-quarter of the employers concerned but not more than 20 individuals in order to establish an employers' organization and a minimum of 30 per cent of employers' associations to establish a group or federation (respectively).

For several years, the Government has indicated that these provisions, according to the General Attorney of the Republic, are not applied in practice.

The Committee firmly hopes that the above provisions will be expressly amended in the near future and asks the Government to inform it of any positive changes in this respect.

Rwanda (ratification: 1988)

1. *Prohibition of the right to strike in the public service.* Recalling that restrictions or prohibition of the right to strike in the public service should be restricted to public servants who are exercising authority in the name of the State, the Committee notes from the information supplied by the Government in its report that the general conditions of service of employees of the State are being amended and that, in order to take into account the observations of the Committee of Experts, the Government intends to amend section 26 of the Legislative Decree of 19 March 1974 issuing the general conditions of service of employees of the State which, in its present wording, forbids state employees to take part in strikes or in activities aimed at causing a strike in the state services. The Committee requests the Government to supply in its next report the draft of the amendment to section 26.

2. *Hindrance with respect to the election of trade union representatives.* Referring to its previous comments, the Committee notes with interest that the draft labour code being submitted, according to the Government's report, amends the provisions of section 8 of the Code prohibiting election of non-Rwandans to trade union office. Section 67(2), of the draft provides that foreign workers may be elected to trade union office after a period of residence of at least five years in the country and subject to their number not exceeding one-third of the members of the organization's management and administration committee.

The Committee requests the Government to supply in its next report information on any progress made in these spheres.

The Committee is also addressing a direct request on other points to the Government.

Saint Lucia (ratification: 1980)

The Committee notes with regret that for the sixth year in succession the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous comment which read as follows:

> With reference to its previous comments on the need to amend sections 18(7) and 19 B(2) of the Trade Unions and Trade Disputes Ordinance of 1959 which confer discretionary power on the Registrar to inspect trade union accounts, by restricting their application to cases of presumed infringements coming to light from the presentation of annual financial reports or to cases of complaints by members of the union, the Committee notes from the Government's report of 1991 that it planned to review its labour legislation, with the assistance of the ILO, in order to harmonize it with ratified Conventions. It asked the Government to indicate in its next report the measures that it had taken to bring the legislation into conformity with *Article 3 of the Convention* and national practice.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sao Tome and Principe (ratification: 1992)

The Committee notes with satisfaction that section 15 of Act No. 5/92 on trade unions, promulgated on 10 March 1992 — the year in which the Convention was ratified

— repeals all legislation on workers' and employers' organizations, including Act No. 1/91 which established the monopoly of one confederation mentioned in the Act and that the new Act ensures the possibility of trade union pluralism.

The Committee raises other points in a direct request.

Senegal (ratification: 1960)

The Committee notes the information contained in the Government's report.

The Committee recalls that its previous comments concerned the need to amend the national legislation in order to:

- guarantee that trade union organizations are not subject to dissolution by administrative authority (Act No. 65-40 of 22 May 1965) in accordance with *Article 4 of the Convention*;
- allow foreign workers to hold trade union office (section 7 of the Labour Code) in accordance with *Article 3*;
- restrict the powers of the authorities to impose compulsory arbitration to bring an end to a strike (sections 238-245 of the Labour Code) to essential services in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

The Committee notes that the Government states in its report that the dissolution of trade union organizations by administrative authority is not provided under the draft Labour Code and therefore Act No. 65-40 of 27 May 1968 is superseded by the new legislation. The Committee emphasizes that a provision of the new legislation should state specifically that the measures concerning administrative dissolution do not apply to occupational trade unions.

The Committee also notes in connection with foreign workers' right to hold trade union office that the draft Labour Code allows this possibility in accordance with certain residence conditions of the foreigner in Senegal but subject to a reciprocal measure for Senegalese nationals residing in the foreign country.

On the subject of compulsory arbitration in regard to a strike, the Committee notes that the Government states in its report that the provisions of sections 238 to 245 of the Labour Code are not binding and that, in practice, they imply the agreement of the parties in the search for a solution to strike movements. The Committee considers, however, that it is necessary to limit the scope of the power conferred on the Ministry of Labour and Social Security in section 238 in which arbitration may be imposed if the Minister considers that the strike is prejudicial to public order and the general interest. The Committee considers that this power should be limited to essential services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

Furthermore, the Committee draws the Government's attention to Act No. 76-28 of 6 April 1976 amending section 6 of the Labour Code which provides that the Minister of State for the Interior has the power to issue or refuse to issue a receipt in accordance with the provisions of section 812 of the Code of Civil and Commercial Obligations in order to recognize the existence of a trade union when it deposits its constitution. The Committee recalls that under *Article 2 of the Convention* workers have the right to establish organizations of their own choosing *without previous authorization*. It therefore requests the Government to take the measures to amend this requirement which is contrary to this Article of the Convention.

The Committee notes that, in its report, the Government states it is prepared to study any concrete proposal to bring its legislation into greater conformity with international standards and that ILO technical assistance in this sphere would be desirable. It also notes that, according to the information supplied by the Government, a draft Labour Code discussed in the framework of tripartite negotiations is about to be placed before the National Assembly. The Committee asks the Government to supply a copy of the draft Labour Code to allow it to examine its compatibility with the requirements of the Convention.

Seychelles (ratification: 1978)

The Committee takes note of the Government's report.

Further to its previous comments, the Committee notes with satisfaction that section 9(1)(e) of the Industrial Relations Act of 1993 which provided that "the Registrar shall not register a trade union if its membership is open to persons who are not engaged in the same trade, or in similar or connected trades or in the same undertaking" has been repealed by Act No. 17 of 1994 and that the new Act ensures the possibility of trade union pluralism.

The Committee requests the Government to provide in its next report comments on the observations made by the Seychelles Workers' Union (SWU) on the application of the Convention.

The Committee is also addressing a direct request to the Government on a number of issues relating to the Industrial Relations Act of 1993.

Swaziland (ratification: 1978)

The Committee notes the information provided in the Government's report received in April 1997, as well as the statement made by the Government representative to the 1997 Conference Committee and the discussion which took place therein.

The Committee recalls that its previous comments concerned numerous discrepancies between the Industrial Relations Act of 1995 (which came into force in January 1996) and the provisions of the Convention. While noting from the discussion in the Conference Committee the Government's indication that the recommendations made by the national Labour Advisory Board concerning amendments to the IRA would be discussed at the end of June with the social partners and that the final amendment Bill would be passed through Parliament by August 1997, the Committee notes with regret that it has not received any information from the Government concerning the progress made in this regard.

With regard to the Government's indication that prison staff, who are excluded from the right to organize by virtue of section 91(c) of the Act, are primarily the same as the police and the defence force and are referred to as the "armed forces", the Committee recalls that *Article 2 of the Convention* refers to the right to organize for workers and employers without distinction whatsoever. The Committee would draw the Government's attention in this regard to paragraph 56 of its 1994 General Survey on freedom of association and collective bargaining in which it indicates that the functions exercised by prison staff should not justify their exclusion from the right to organize based on the argument that they might be excluded under *Article 9*. On the other hand, prison staff may be deprived of the right to strike. The Committee asks the Government to provide a copy of the regulations governing the conditions of employment of prison staff.

Regarding the obligation upon workers to organize within the context of the industry in which they exercise their activity (section 27 of the Act) and the power of the Labour

Commissioner to refuse to register a trade union if he or she is satisfied that an already registered organization is sufficiently representative (section 30(5) of the Act), the Committee notes the Government's indication that this does not pose any functional problem and that the labour force is too small to afford union multiplicity. The Committee once again recalls however that *Article 2 of the Convention* provides that workers and employers shall have the right to establish and join organizations of their own choosing and that, while it was clearly not the purpose of the Convention to make trade union diversity an obligation, it does at the very least require this diversity to remain possible in all cases (see 1994 General Survey, paragraph 91). However, the Committee has noted provisions in some countries which attempt to establish a proper balance between imposed trade union unity and the fragmentation of organizations by establishing the concept of the most representative trade unions which are generally granted a variety of rights and advantages. The Committee has considered that such provisions are not contrary to the principle of freedom of association provided that the determination of the most representative organizations is based upon objective, pre-established and precise criteria and that the distinction is limited to the recognition of certain preferential rights, such as collective bargaining or national consultation (see 1994 General Survey, paragraph 97).

Furthermore, the Committee would recall the following discrepancies between the legislation and the provisions of the Convention:

- the prohibition of a federation or any of its officers from causing or inciting the cessation or slow-down of work or economic activity upon punishment of imprisonment up to five years (section 40(3) of the Act);
- limitation of the activities of federations to that of providing advice and services (section 40 of the Act);
- prohibition of the right to strike in the broadcasting sector under punishment of one year imprisonment for the holder of an office in an organization or federation and possible disqualification from holding office for one year (section 73(5 and 6) of the Act);
- power of the Minister to apply to the court to enjoin any strike or lock-out if he or she considers that the "national interest" is threatened (section 70(1) of the Act);
- important restrictions of the rights of organizations to hold meetings and peaceful demonstrations (section 12 of the 1973 Decree on meetings and demonstrations);
- the prohibition of sympathy strikes (section 87(1)(e) of the Act);
- strike ballots conducted by the Commissioner of Labour and the requirement that a majority of the employees concerned approve such action (section 66(1)(b)) (see 1994 General Survey on freedom of association and collective bargaining, paragraph 170);
- penal sanctions ranging from one to five years for various "unlawful" forms of industrial action under sections 69(2), 72(3), 73(3-5), 74 and 87(3), including with respect to restrictions which are in violation of the principle of the right to strike;
- the power of the court to limit the non-occupational activities or wind up an organization or federation which has devoted more funds and more of the time of its officers to campaigning on issues of public policy or public administration than to protecting the rights and advancing the interests of its members (section 42(2));
- the power of the court to cancel or suspend registration of any organization taking strike action which is not in conformity with the Act, even for simple procedural violations (section 69(1)(b)).

- obligation to consult the minister prior to international affiliation (section 41(1) of the Act).

The Committee trusts that the Government will take the measures necessary to amend these provisions of the Act in the very near future so as to bring them into full conformity with the provisions of the Convention and would once again point out that the technical assistance of the ILO is available in this respect.

[The Government is requested to provide full particulars to the Conference at its 86th Session.]

Trinidad and Tobago (ratification: 1963)

The Committee notes from the Government's report that there has been no change in the status of the application of this Convention.

The Committee recalls that for many years now it has indicated the need to amend section 59(4)(a) of the Industrial Relations Act so as to enable a simple majority of the voters in a bargaining unit (excluding those workers not taking part in the vote) to call a strike and to amend sections 61 and 65 to ensure that any resort to the courts by the Ministry of Labour, or by one party only, to end a strike is limited to cases of strikes in essential services in the strict sense of the term, that is to say, those in which the strike would endanger the life, personal safety or health of the whole or part of the population, or in cases of acute national crisis. The Committee trusts that the Government will take the necessary measures in the very near future to amend the Industrial Relations Act so as to bring it into conformity with the Convention and requests the Government to indicate the progress made in this regard in its next report.

Tunisia (ratification: 1957)

The Committee notes the information contained in the Government's report.

With reference to its previous comments concerning the obligation to obtain the approval of the central workers' union before declaring a strike, the Committee notes the Government's statements to the effect that the trade union organizations have insisted on maintaining the current provisions of section 376bis(2) of the Labour Code, considering that the approval needed from the central workers' union for a strike was a useful procedure for informing the central union and for the effectiveness of conciliation activities and measures aimed at resolving the conflict. The Committee emphasizes once again however that this provision is liable to restrict the right of first-level unions to organize their activities *(Article 3 of the Convention)* and to promote and defend the interests of the workers *(Article 10)* and therefore asks the Government to repeal this provision in order to bring its legislation into fuller conformity with the principles of freedom of association.

The Committee requests the Government to indicate if, under section 381ter of the Labour Code as amended, a list of essential services has been established by Decree and, if so, to provide it with a copy.

Venezuela (ratification: 1982)

The Committee notes the information provided by the Government in its report and also the discussions which took place in the Conference Committee on the Application of Standards in June 1997; it recalls that its previous comments concerning the Organic Labour Act referred for many years now to:

- the requirement for an excessively long period of residence (more than ten years) i order for foreign workers to hold trade union office (section 404);
- the excessively long and detailed list of duties entrusted to and aims to be achieve by workers' and employers' organizations (sections 408 and 409);
- the requirement for an excessively high number of workers (100) necessary to for self-employed workers' trade unions (section 418); and
- the requirement for an excessively high number of employers (ten) needed t establish an employers' trade union (section 419).

The Committee duly notes that, in accordance with the information provided by th Government, discussions have begun with the most representative organizations o employers and workers, within the recently established "Tripartite Commission for Socia Dialogue", in order to bring the labour legislation into line with the requirements of th Convention.

The Committee once again expresses the firm hope that as a result of the tripartit dialogue, specific progress towards overcoming the existing discrepancies betwee national legislation and the Convention may be observed in the near future. Th Committee requests the Government to provide detailed information in this respect in it next report.

The Committee is addressing a request on another matter directly to th Government.

* * *

In addition, requests regarding certain points are being addressed directly to th following States: *Argentina, Belarus, Bulgaria, Chad, Costa Rica, Croatia, Czec Republic, Latvia, Lithuania, Luxembourg, Panama, Paraguay, Peru, Portugal, Rwanda Sao Tome and Principe, Seychelles, Tunisia, Venezuela.*

Information supplied by *Belgium, Burkina Faso* and *Seychelles* in answer to a direc request has been noted by the Committee.

Convention No. 88: Employment Service, 1948

Djibouti (ratification: 1978)

The Committee notes with regret that, for the third year in succession, th Government's report has not been received. It must therefore repeat its previou observation which read as follows:

> The Committee notes that many of the Articles of the Convention are still not bein applied.
>
> *Article 3 of the Convention.* The Government states once again that no measure ha been taken to set up a sufficient number of employment offices, despite the provisions o section 41 of Act No. 21/AN/83 first L of 3 February 1983 to organize the centra administration of the Ministry of Labour and Social Welfare. The Committee notes that n progress has been achieved in this respect for several years and once again hopes that th appropriate measures will be taken in the near future to give effect to this Article of th Convention, and to the above provisions of the national legislation. It requests the Governmen to supply information on any progress achieved in this respect in its next report.
>
> *Articles 4 and 5.* In its previous comments, the Committee noted that no arrangement had been made through the advisory committee provided for in section 162 of the Labou Code currently in force to involve the social partners in the organization and operation of th

National Employment Service. The Government's report provides no new information on this aspect. The Committee therefore once again hopes that the Government will not fail to take the necessary steps in the very near future to give full effect to these Articles, which provide that suitable arrangements shall be made through advisory committees for the cooperation of representatives of employers and workers in the organization and operation of the employment service, and consultation with these representatives in the development of employment service policy. The Committee trusts that the Government will be able to describe in its next report the measures which have been taken or are envisaged and the progress which has been achieved with a view to ensuring conformity with these provisions of the Convention.

Articles 7 and 8. In its previous report, the Government stated that no measures had been taken to give effect to these Articles owing to the lack of qualified managerial staff in the placement division. The Committee nevertheless hoped that the Government would do its utmost to take appropriate measures in the very near future to meet the needs of particular categories of applicants for employment, such as persons with disabilities and juveniles, in accordance with these Articles. It hopes that the Government will be able to describe the progress achieved on these points in its next report.

Article 9, paragraph 4. The Committee notes from the Government's report that the project for the specialized training of managerial staff, financed by the EC and the World Bank, has come to an end. It would be grateful if the Government would indicate any action taken to continue the provision for adequate training of staff for the performance of their duties in the employment service, in accordance with these provisions of the Convention.

Point VI of the report form. The Committee would be grateful if the Government would continue to supply information on any practical difficulties encountered in the implementation of the Act of 1983 and in the application of the Convention. The Government may find it helpful to have some assistance from the ILO on certain aspects of the application of the Convention.

The Committee hopes that the Government will take all the necessary measures in the near future.

Peru (ratification: 1962)

1. *Articles 4 and 5 of the Convention.* With reference to its previous observation, the Committee notes with regret that the Government is still not able to indicate that the advisory committees required by these provisions of the Convention have been set up. It notes the information that a draft reform of the public employment service is under consideration. In this connection, the Committee recalls the Government's repeated assurances for many years regarding the various drafts which were to give effect to these Articles of the Convention. It trusts that the Government will ensure, in the framework of the reform it announces, that suitable arrangements have been made for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in determining its general policy.

2. *Article 8.* The Committee notes that the information supplied by the Government in its report relates to the occupational training programme for young people in general, and not to the special arrangements made for them within the framework of the employment services. The Committee, which refers to its comments under the Employment Policy Convention, 1964 (No. 122) in regard to measures for integrating young people, stresses once again the need to give full effect to this provision in a context where young people under 25 years old are experiencing particular difficulties in gaining access to appropriate employment.

Sierra Leone (ratification: 1961)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes from the Government's report that the draft Employment Service Regulations to which the Government has been referring since 1974 have still not been adopted. The Government indicates once again that the question of the adoption of the draft Regulations is still on the agenda of the next meeting of the Joint Consultative Committee.
>
> The Committee reiterates its hope that the new provisions will be adopted in the very near future and that the next report will contain the information previously requested on: (a) the setting up of national, and where necessary regional and local, advisory committees ensuring the participation of employers' and workers' representatives in equal numbers in the organization and operation of the employment service and in the development of the general policy of this service, in accordance with *Articles 4 and 5 of the Convention*; and (b) the determination of the functions of the employment service in accordance with *Article 6*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future, including the use of ILO technical cooperation.

United Republic of Tanzania (ratification: 1962)

Tanganyika

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Government indicates that the project document elaborated with the technical assistance of the ILO, concerning the establishment of employment promotion offices (EPOs), which would perform the role of the former employment exchanges, has not been implemented due to the lack of financial resources. The Government also states that specialization by occupation and by industries is not currently given emphasis for the same reason. In its previous report received in October 1993, the Government informed of its intention to open the EPOs in three regions of the country. The Committee hopes that the project concerning the establishment of EPOs will be put into practice in the near future and asks the Government to keep it informed of any progress made in this regard. The Committee trusts that the Government will not fail to supply, in its next report, information on measures taken in this connection with a view to ensuring full application of *Article 6 of the Convention* (Employment service's functions) and *Article 7* (Measures to facilitate within the various employment offices specialization by occupation and by industries, and to meet the needs of particular categories of applicants, such as disabled persons).
>
> The Committee in its previous comments noted from the Government's report received in October 1993 the information concerning action taken as a result of preparation of various youth programmes and consultancy services. The Committee asked the Government to continue to describe the developments in this field and, more particularly, special arrangements for juveniles made within the framework of the employment and vocational guidance services, in accordance with *Article 8*. It observes that the Government's report contains no information on this point. The Committee hopes that the information requested will be supplied by the Government in its next report in order to enable the Committee to assess the application of this Article.
>
> While noting the Government's statement in the report concerning difficulties in providing statistical information, the Committee reiterates its hope that such information will be supplied as soon as it becomes available, in accordance with *point IV of the report form*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to *Sao Tome and Principe*.

Convention No. 89: Night Work (Women) (Revised), 1948 [and Protocol, 1990]

A request regarding certain points is being addressed directly to *Swaziland*.

Convention No. 90: Night Work of Young Persons (Industry) (Revised), 1948

Requests regarding certain points are being addressed directly to the following States: *Lithuania, Swaziland*.

Convention No. 91: Paid Vacations (Seafarers) (Revised), 1949

Brazil (ratification: 1965)

Article 3, paragraph 2, Article 4, paragraph 1, and Article 7, of the Convention. Further to its previous comments, the Committee notes the Government's 1996 report which acknowledges the need to bring sections 146 and 147 of the Consolidated Labour Laws (CLT) into conformity with *Article 3, paragraph 2, and Article 7 of the Convention* in order to ensure the right to a proportionate annual leave with the corresponding remuneration for a seafarer leaving the service or discharged after not less than six months of continuous service. The Committee further notes that the Government's 1996 report also acknowledges the need to amend section 136 of the CLT which provides that seafarers' annual paid holidays shall be granted at a period most suitable to the employer, while *Article 4, paragraph 1, of the Convention* requires that this be given by mutual agreement at the first opportunity as the requirements of service allow.

The Committee also notes from the same 1996 report that the Government considers that the economic, social and political changes through which the country is going render the CLT obsolete, and that there is a need for a new system of labour relations based on freedom of association and free negotiation between employers and workers. It notes the Government's view that it is impossible to foresee when this system will be set up because this depends on prior constitutional reform and adoption of new laws. It notes further that the Government has decided to submit the matter to the Permanent Social Law Committee of the Ministry of Labour for the most appropriate way to bring national legislation into conformity with the provisions of the Convention. It notes however that the Government's 1997 report does not contain the information promised in its 1996 report on the legal, normative and practical measures adopted to ensure full implementation of the Convention.

The Committee recalls that sections 136, 146 and 147 of the CLT have been the subject of its comments for a considerable length of time. It has been expressing its hope since 1982 for the adoption of a draft law in this regard. The Committee had also noted previously that the Labour Law Committee, a body linked to the Ministry of Labour, had examined the draft law for many years with a view to its adoption. The Committee again notes from the Government's 1996 report that this body was expected to indicate the most appropriate way to bring national legislation into conformity with the requirements of the Convention. The Committee trusts the Government will not fail to take the necessary measures: (a) to ensure the right to proportionate annual leave with the corresponding remuneration for a seafarer leaving the service or discharged after not less than six months of continuous service, in accordance with *Article 3, paragraph 2, and Article 7 of the Convention*; and (b) to specify that when an annual holiday is due, it shall be given by mutual agreement at the first opportunity as the requirements of service allow, so that *Article 4, paragraph 1, of the Convention* is fully applied.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Angola, Djibouti, Guinea-Bissau, Israel, Poland*.

Convention No. 92: Accommodation of Crews (Revised), 1949

Algeria (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information contained in the Government's report. It once again hopes that the necessary measures will be taken to adopt laws or regulations in the very near future to give effect to *Articles 6 to 17 of the Convention*, as provided in *Article 3, paragraph 1*.
>
> *Point V of the report form*. The Committee hopes that in future the Government will be in a position to supply reports containing specific information on the application of the provisions of the Convention and concerning the inspections made when a ship is registered or re-registered, when the crew accommodation of a ship has been substantially altered or reconstructed or when a complaint has been made by the members of the crew to the competent authority, as provided in *Article 5*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Brazil (ratification: 1954)

In its previous comments the Committee recalled that *Article 3 of the Convention* establishes the obligation to maintain in force laws or regulations which ensure the application of the provisions of Parts II, III and IV of the Convention, and asked the Government to take the necessary measures to ensure that such legislation was adopted.

The Committee notes that, according to the information supplied by the Government in its report, the legislation has not yet been amended. The Committee also notes the Government's statement that the Tripartite Working Group resumed work during the first semester of 1997 for the purpose of putting the provisions of Convention No. 147 into practice.

The Committee hopes that the Government will adopt legislation in the very near future to ensure the application of the provisions of Parts II — planning and control of crew accommodation; III — crew accommodation requirements; and IV — application of the Convention to existing ships.

[The Government is asked to report in detail in 1999.]

Iraq (ratification: 1977)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee has noted the Government's replies to its previous comments. It notes that Instructions No. 22 of 1987 concerning safety and health at work do not seem to apply to ships, since they do not relate to the public sector. It recalls that, while there is some legislation referring in general terms to inspection in the Civil Marine Service and dealing with some specific aspects of working conditions, there appear to be no detailed laws and regulations as required by *Article 3 of the Convention* ensuring the application of *Parts II* (Planning and Control of Crew Accommodation), *III* (Crew Accommodation Requirements) and *IV* (Application of Convention to Existing Ships). The Committee fully appreciates the efforts made by the competent maritime administration, as mentioned in the report. However, it would hope that the Government will envisage taking the necessary legislative and practical measures — perhaps with the benefit of the ILO's technical advice — in order to apply the Convention in full. It hopes the next report will include details of the steps taken or proposed to this effect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Italy (ratification: 1981)

The Committee notes the information provided by the Government in its report according to which the administration is in the process of preparing a review of Act No. 1045 of 16 June 1939 on hygiene and living conditions of crews on board national merchant vessels which would take into consideration the provisions of the Convention.

Given that the Convention has been in force in Italy since 1981, the Committee expresses the firm hope that the Government's next report will provide details of the adoption of the necessary provisions to bring legislation into conformity with the Convention. It requests the Government to provide a copy of the texts where adopted.

[The Government is asked to report in detail in 1999.]

Liberia (ratification: 1977)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that, whilst certain provisions have been supplied in relation in particular to the inspection of crew accommodation, there appears still to be none of the detailed regulation of crew accommodation required by *Part III of the Convention*. The Committee hopes that the legislation necessary to ensure the application of the Convention in full will soon be enacted, and that the Government will supply a report including full details.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Cuba, France, Greece, Israel, Italy, Poland, Portugal, Tajikistan.*

Convention No. 94: Labour Clauses (Public Contracts), 1949

Austria (ratification: 1951)

In its previous observation, the Committee noted the information supplied by the Government with regard to the scope of the Federal Act on the Award of Contracts (B Verg G) BGBI No. 462/1993. It also noted in its earlier observation, the comments of the Federal Chamber of Labour, according to which: (i) the criteria established for the conduct required of employers in connection with the award of public contracts are too narrow (only illegal employment of foreigners, non-payment of taxes and other levies and failure to meet levels of pay set out in collective agreements are penalized, but *not* the violation of other labour law provisions, such as the right to vacation); and (ii) mandatory penalties are laid down only for repeated violations of regulations governing the employment of foreigners, while for the other offences, the contract-awarding authorities are granted a broad discretion on the award of contracts.

The Government indicates in its communication that section 44, paragraph 1, item (4) of the Act gives no restrictive list of acts constituting "serious" misconduct, and that any breach of law may be grounds for elimination from tendering procedure. The Government further states, regarding the practical application, that the Federal Ministry of Economic Affairs has immediately eliminated from its adjudications companies which have prepared and submitted their tenders on a basis which does not meet the working conditions and social law standards in force, and that this has been applied to tenders from firms in the States undergoing reform and tenders involving substantial subcontracting of services to companies from those States (e.g. the conducting of chemical analyses).

The Committee notes this information. With reference to *Article 5(1) of the Convention* which calls for the application of adequate sanctions for failure to observe the labour clauses in public contracts, the Committee requests the Government to continue to supply information on the practical application of the provisions of the Act.

Cameroon (ratification: 1962)

Further to its previous observation, the Committee notes the Government's statement to the effect that the necessary measures to bring the legislation into conformity with the provisions of the Convention are in progress. The Government also indicates that it has accepted the suggestion to consider requesting ILO assistance in adopting the necessary legislation to apply the Convention.

The Committee recalls that section 18 of Decree No. 86/903 of 18 July 1986 governing public contracts, which provides that enterprises submitting tenders must undertake in their bid to comply with all legislative, regulatory or collective agreement provisions relating to wages, working conditions, safety, health and welfare of the workers concerned, does not implement *Article 2 of the Convention* requiring the inclusion of clauses guaranteeing to workers in enterprises involved in public contracts the same working conditions as those for work of the same character in the trade or industry concerned in the nearest appropriate district.

The Committee hopes that the Government will adopt the necessary measures to bring its legislation into conformity with the Convention. It requests the Government to indicate all measures taken or envisaged in this regard, including contact made with the ILO in regard to the possibility of technical assistance.

Panama (ratification: 1971)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> Further to its previous observation, the Committee notes the Government's indication in the report to the effect that it intends to deal with the measures to apply this Convention in the tripartite labour commission which is examining the questions relating to the Labour Code. It hopes that the necessary measures will be taken in the near future and requests the Government to indicate any progress made in this regard.
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> As to the questions raised in the previous direct request regarding the Specifications of Public Tenders (Model Articles and Conditions), the Committee notes that the Government's report gives no reply to them and repeats them in a new direct request. It hopes that the Government will supply the information requested.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Turkey (ratification: 1961)

With reference to its previous observation, the Committee notes the Government's report, as well as the comments attached to it made by the Confederation of Turkish Trade Unions (TÜRK-IŞ) and the Turkish Confederation of Employers' Association (TISK). It notes that the comments of TÜRK-IŞ supplied with the Government's report is identical to the one received by a letter dated 17 June 1996.

The Committee recalls that the Governing Body at its 270th Session noted an interim report of its Officers concerning a representation made by the Confederation of Turkish Trade Unions (TÜRK-IŞ) by a letter dated 17 June 1996, which referred to article 24 of the ILO Constitution, and which alleged non-observance by Turkey of the Convention. According to paragraph 5 of this report of its Officers, the Governing Body considers that the receivability of the representation should be established in the light of further developments in the ongoing procedure initiated by TÜRK-IŞ, i.e. the examination by the Committee of Experts of the same information received by a letter also dated 17 June 1996 and its follow-up.

Road, building and construction sector

In its previous observation, the Committee noted the comments made by the TÜRK-IŞ, with reference to the spreading practice of subcontracting, that the collective labour agreement concluded by the General Directorate of Highways and the Road, Building and Construction Workers' Union of Turkey (YOL-IS) was not applied to the employees of the contractors and subcontractors of the General Directorate.

The Government again refers, regarding this point, to the existing legislative provisions, such as Decree No. 88/13168 concerning general principles governing working conditions (labour clause) to be included in public contracts, and the "General Specifications for Public Works", the text of which was supplied with the Government's previous report, and which indeed contain provisions corresponding to the labour clauses in line with *Article 2(1) of the Convention*. According to the Government, the "General Specifications" are always enclosed in the public contract falling within their scope. The Government further declares in the report that the relevant national provisions should be presumed to have been applied in practice since the competent administrative authorities are responsible for compliance. It adds that in case of a breach, the case can always be brought to court by the employees and three examples of court decisions are attached to the report.

The Committee recalls that the existing legislative provisions and the "General Specifications" are in conformity with the requirements of the Convention. It again points out that the present issue relates to the application in practice of the national provisions that give effect to the Convention.

The Committee recalls that the "General Specifications" include provisions (section 33 (paragraph 14)) stipulating the application of penal provisions under section 47, which implies the possibility of the public administration terminating the contract in the case of failure to comply with the working conditions prescribed in the labour clause contained in the preceding paragraph of the same section. It notes that this provision itself is in conformity with *Article 5 of the Convention*, which calls for adequate sanctions by withholding of contracts or otherwise for failure to observe and apply the provisions of the labour clause. The Committee notes, however, the Government's indication in the report that there has been no recourse to termination of a contract for reasons of non-compliance with labour clauses during the reporting period (1 July 1996 to 31 May 1997). It recalls that one of the reasons for using labour clauses in public contracts to protect working conditions is that the provision of penalties, such as the withholding of payments to the contractor, makes it possible to impose more directly effective sanctions in case of infringements. The Committee therefore asks the Government to continue to supply information on the application of the above provisions in practice.

The Committee also requests the Government to supply information on the functioning of the control body under section 33 of the "General Specifications" and the inspection under section 4 of Decree No. 88/13168, including the number and nature of the cases in which violations are observed and penal sanctions actually applied in accordance with the provisions referred to. It also asks the Government to continue to indicate any further measures taken or envisaged to ensure that, in accordance with the above provisions of the Decree and the "General Specifications", the workers employed by public contractors enjoy wages and other conditions of work that are not less favourable than those established by the existing collective agreement for work of the same character in the sector of road, building and construction.

Contracts for the manufacture and assembly of materials

The TÜRK-IŞ also pointed out that Decree No. 88/13168 covered only contracts concerning construction, services, earth-moving and transportation of materials, and that the alteration, repair or demolition of public works and the manufacture and assembly of materials, supplies or equipment are excluded from the obligation of labour clauses under this Decree.

The Committee notes that the Government refers to section 4 of Act No. 2886/1983 concerning public tender, which defines "service" to include "research, drilling, manufacture, prototype manufacture, exploration, study, map planning, project making, supervision, counselling and all kinds of similar services contracted out to a natural or legal person"; "construction" is also defined to include "all kinds of construction, preparation, manufacturing, drilling, installation, restoration, demolition, alteration, improvement, renovation and assembly works"; and "transportation" to include "loading, moving, unloading, storing and packing". The Government also indicates that Decree No. 88/13168 covers contracts relating to construction, services, earth-moving and transportation of materials, while the "General Specifications" embraces within its scope only construction and service activities as defined in article 4 of Act No. 2886.

The Committee notes that according to these definitions under article 4 of Act No. 2886, Decree No. 88/13168 is applicable to all contracts covered by *Article 1(c)(i) and* *(ii)*. It asks the Government to supply information on its application in practice to the public contracts for the manufacture and assembly of materials.

Awareness raising

As regards the comment of the TÜRK-IŞ on the non-observance of *Article 2(4)* of the Convention under which the competent authority should take measures, by advertising specifications or otherwise, to ensure that persons tendering for contracts are aware of the terms of the labour clauses, the Government indicates that the Decree and the "General Specifications" are the standard appendices to the public contracts, of which the contractors are undoubtedly aware. The Committee asks the Government to supply information on measures taken or envisaged to bring the relevant provisions of the Decree and the "General Specifications" to the attention of tenderers for public contracts, at the stage of tendering before the public contract is awarded.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Burundi, Djibouti, Panama, Saint Lucia, Swaziland*.

Convention No. 95: Protection of Wages, 1949

Argentina (ratification: 1956)

Benefits to improve the nutrition of workers and their families. The Committee earlier noted Decrees Nos. 1477/89 and 1478/89 respecting benefits to improve the nutrition of the worker and his family, as well as Decree No. 333/93 enumerating the benefits that do not have the character of remuneration. It pointed out that these "benefits", however they are termed (bonuses, supplementary benefits, etc.), constituted components of remuneration in the sense of *Article 1 of the Convention*, and requested the Government to ensure that these benefits should be subject to the measures set out in *Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 16* of the Convention. In the previous observation, the Committee noted that Decree No. 1477/89 was repealed by virtue of Decree No. 773/96 of 15 July 1996, which refers in the preambular part to the comments by the ILO supervisory bodies.

The Committee notes from the information supplied by the Government, that by virtue of section 6 of Act No. 24,700 of 25 September 1996, the above-mentioned Decree No. 773/96 was repealed and that section 103bis of the Act on Labour Contract, as amended by the same Act, establishes a concept of "social benefits" of "non-remunerative" character with a view to improving the quality of life of the employee and the family, which includes the food coupons and food baskets up to the value of 20 per cent of the gross remuneration for workers covered by collective agreements and 10 per cent for others.

The Committee notes with regret that this new legislation brings the situation back to that of discrepancy with the requirements of the Convention mentioned at the beginning. It notes the Government's explanation that the repealed Decree No. 773/96 was causing disadvantages to workers because employers stopped to grant such benefits as soon as they were considered part of wages, as this resulted in the increase of employer's contributions and thus the labour cost. The Committee draws the Government's attention to the distinction between the protection that the Convention affords as regards wages and the question of calculating social security or other contributions. As regards the latter, the

Committee points out that the definition or scope of wage as the basis for calculation of social contributions is outside the scope of this Convention. It requests the Government to re-examine the matter and to take all necessary measures to protect the payment of all components of remuneration as defined by *Article 1*, including benefits in the form of food or related coupons, as set out in *Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 16 of the Convention*.

Settlement of the debts of the State. The Committee also noted in the earlier observation, Decree No. 1639/93 of 4 August 1993, which was intended to speed up the procedures for the settlement of debts of the State, including wage arrears owed to workers in the public service, up to 1 April 1991 which were consolidated under the terms of Act No. 23982 and recognized by the courts. It notes the indication in the Government's report that the application of this Decree has been accelerated and that the market value of the coupon (BOCON), which is used also for settling wage arrears, is higher than the nominal value. The Committee requests the Government to continue to supply information on the progress made in this matter as regards the settlement of the wage arrears owed to workers in the public service.

Deferred payment of wages. In its earlier observations, the Committee noted the comments made by the Confederation of Educational Workers (CTERA) and the Union of Educational Workers of Rio Negro, concerning the deferred payment of wages which are due. The Committee notes the Government's statement that in a large part of the provinces, the situation of wage payment in the public sector is slowly normalizing, as a consequence of measures taken by local administration to improve its financial situation, that in general the situations of deferred payment have been decreasing and that no new complaints in this regard have been registered.

The Committee notes that a further comment concerning several Conventions including this one was received in March 1997 from the Union of Educational Workers of Rio Negro. The said organization refers to the reduction of wages, which the Committee considers outside the scope of the Convention. A point is also raised about sums lacking the character of remuneration, paid monthly to compensate for the insufficiency of wages. The organization calls for their inclusion in the basis for calculations as regards social security. As mentioned above, the Committee considers that the question does not fall within the scope of the Convention.

Although noting that the Union of Educational Workers of Rio Negro does not mention the deferred payment of wages in the latter comment, the Committee requests the Government to continue to supply information on the situation of wage payment in the provinces, and any measures taken to ensure the regular payment of wages in accordance with *Article 12(1) of the Convention*.

Payment in local government bonds. The Committee also noted earlier the observations from the World Federation of Trade Unions, regarding state employees in Cordoba, on the non-payment of wages and the decision of the provincial government of Cordoba to pay their wages in local government bonds.

The Committee notes the Government's indication that, from January 1997, the threshold for payment of wages in CECOR (Certificates of Cancelation of Obligations of the Province of Cordoba) is raised from $400 to $2,000, which corresponds to the wage level of extremely high-level officials, and therefore teachers in the public sector no longer receive their wages in the form of these bonds.

Maritime sector. In reply to the earlier comments made by the Union of United Maritime Workers (SOMU), the Government states that it asked the SOMU to submit separate complaints so that relevant procedures could be followed, and a copy of the complaint made by SOMU to the Ministry of Labour and Social Security is attached to the Government's report. The Committee notes that the points raised in this document by the SOMU concerning a fishing and deep-freezing company, include one on the payment of wages, which is made only after finishing each catch *(marea)*, therefore at the interval of 45 to 60 days. The Committee requests the Government to provide detailed information on measures taken to ensure the practical application of the Convention in the maritime sector (in particular *Article 12(1)* in the fishing sector) and on any difficulties encountered, including, for instance, extracts from official inspection reports and information on any infringements observed and sanctions applied with regard to the payment of wages.

Application in practice. The Committee hopes that the Government will continue to provide information on the application of the Convention in practice and measures taken to ensure it, in accordance with *Article 16 of the Convention*, including information on any difficulties encountered.

[The Government is asked to report in detail in 1998.]

Chad (ratification: 1960)

Article 6 of the Convention. Further to a previous direct request, the Committee notes with satisfaction that under section 257, paragraph 4, of the new Labour Code (Act No. 038/PR/96 of 11 December 1996) employers are prohibited from limiting in any manner the freedom of the worker to dispose of his wages.

Colombia (ratification: 1963)

The Committee previously noted the observations made by the General Confederation of Democratic Workers (CGTD). The CGTD pointed out that, in violation of the Convention, wages had not been paid for several months to workers in the state and public sectors, for example, in the Departments of Putumayo, Vinchada, Sucre and Meta, and also in the Municipalities of Tolú, Quibdó, Montería, Puerto Asis and Caicedonia. The CGTD added that, although this irregularity has been brought to the attention of the Government, in particular, the Ministries of Labour, the Interior, and the Council of Social Policy, no action had been taken to impose sanctions or other measures to ensure the payment of wages to these workers.

The Committee notes the Government's indication that, according to the Regional Directorate of Labour and Social Security of Córdoba, the Municipality of Montería is in peace with its workers as regards wages; that the Regional Directorate of Putumayo stated that the wages to its workers were liquidated; and that the Labour and Social Security Inspection of Cartago initiated an administrative investigation against the municipal enterprises of Cartago for the violation of the collective agreement of labour, sentencing the enterprises with 30 times minimum wages (as fines). The Committee notes this information, although it notes that the violations referred to regarding the last-mentioned investigation do not directly relate to payment of wages covered by the Convention.

The Committee requests the Government to indicate measures taken for the application in practice of *Article 12 of the Convention* concerning the regular payment of wages in the other regions mentioned by CGTD.

[The Government is asked to report in detail in 1998.]

Congo (ratification: 1960)

1. The Committee notes that at its 268th Session (March 1997), the Governing Body adopted the report of the Committee set up to examine the representation made by the Trade Union Confederation of Congo Workers (CSTC), under article 24 of the ILO Constitution, alleging non-observance by Congo of Convention No. 95. The Governing Body invited the Government to furnish, in the reports on the application of the Convention, detailed information on: (i) the regular payment of wages to public servants and workers in public enterprises or state property; (ii) the payment of sums owing in respect of delayed wages for the period 1992-96, including the number of wage-earners affected, the nature and amount of the debts involved, the number and type of administrations and enterprises concerned in the non-payment of wages owing for this period, and the amounts of the payments made; (iii) the possible implementation of the proposal made by the Government in April 1994 guaranteeing wage debts and the methods used for the payment of arrears; and (iv) the final payment of the amounts owing in respect of wages not only to public servants whose case has been submitted to the Administrative Appeals Committee, but also to workers in public enterprises or state property who have stopped work for good.

In response, the Government has provided the following information: (i) the concerted measures designed to scale down wages and indemnities in proportion to the reduction in working hours have enabled the regular payment of wages to public servants and other employees of public establishments receiving money from the state budget to be re-established. The regular payment of wages in public enterprises or state property is in the process of being established; (ii) the wages owing for the period 1992-96 to public servants will be paid gradually beginning in 1997, on the basis of the funding available. All public servants and employees of public establishments receiving money from the state budget during this period are affected and the arrears owing are estimated at 124 thousand million francs which represent allowances and compensations; (iii) wage debts are guaranteed since the arrears are included in the State's internal debt. They will be reimbursed partly in cash while the rest will be in the form of vouchers which may be redeemed at treasury offices; (iv) the Government has not yet completed its examination of the conclusions reached by the Administrative Appeals Committee with regard to the non-permanent public servants struck off the civil service list. The former workers of public enterprises or state property which have been liquidated regularly receive sums in respect of the payment of their entitlements from the State.

The Committee notes this information and requests the Government to indicate the measures taken to ensure the application of the Convention in this regard.

2. The Committee also notes the information supplied by the Government concerning the question of the payment of the sums owing to the former workers of the Ogoué Mining Company (COMILOG), in particular that many political and diplomatic contacts have been established with the Government of Gabon so that it may get COMILOG to face up to its responsibilities. The Committee requests the Government to indicate the measures taken to ensure the payment of the sums owing to the COMILOG workers.

[The Government is asked to report in detail in 1998.]

Libyan Arab Jamahiriya (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

The Committee noted the discussion which took place at the Conference Committee in June 1996 on the final settlement of wages due to Palestinian workers who had recently left the Libyan Arab Jamahiriya.

The Government confirmed at the Conference Committee its earlier statement that all the entitlements of Palestinians working with employment permits and formal contracts had been respected at the expiry of their contract, including the entitlements arising both from employment and from social security, and this was the case for 95 per cent of the Palestinian workers. It added that the employment agencies of the Public Office for the Labour Force had not received any complaints to that date concerning the entitlements of a Palestinian worker. The Government further stated that, parallel with a meeting of the Council of the ICFTU for the Arab Trade Unions, a meeting was held in Tripoli in March 1996, attended by the Palestinian Trade Union Federation, the General Federation of the Producers' Trade Unions and the International Confederation of Arab Trade Unions, where it was agreed to look into the claims of Palestinian workers and to settle them in an amicable way and on a bilateral basis between the two federations and under the auspices of the International Confederation of Arab Trade Unions. The Government emphasized that it was ready to take all the necessary measures to settle the entitlements of any worker who could prove the existence of outstanding entitlements.

Recalling that the Convention applies to all persons to whom wages are paid or payable, irrespective of the characteristics of their contracts, formal or non-formal, it requests the Government to provide information on all measures taken to ensure the final settlement of wages at the expiry of a contract, in accordance with *Article 12(2) of the Convention*, for the Palestinian workers other than those with employment permits and formal contracts.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Russian Federation (ratification: 1961)

Representation under article 24 of the Constitution

The Committee notes that the Governing Body at its 270th Session (November 1997) adopted the report of the committee set up to examine the representation alleging non-observance by the Russian Federation of the Convention, made under article 24 of the ILO Constitution by Education International and the Education and Science Employees' Union of Russia.

The Committee notes that, following the recommendations of the above committee, the Governing Body urged the Government to ensure the full application of the Convention and in this regard:

(i) to take all necessary measures, in full consultation with workers' and employers' representatives, to ensure prompt payment of wage arrears owed by different state budgets, enterprises and organizations;

(ii) to strengthen supervision of payment of wages, notably through the reinforcement of the activities of the labour inspectorate;

(iii) to ensure effective enforcement of dissuasive sanctions for the non-payment of wages;

(iv) to take specific measures to prevent the diversion to illicit purposes of funds which should be used to pay wages;

(v) to ensure that measures taken to reimburse wage arrears do not result in the violation of other provisions of the Convention.

The Governing Body further invited the Government to supply detailed information on all the measures taken or envisaged in accordance with the above recommendations and the consequent development of the situation, including:

(i) details of the numbers of workers affected, the nature and amount of wages owed, and the number and nature of the establishments and enterprises concerned in the non-payment of wages as well as the amount of payments already made;

(ii) the number of labour inspection visits made in connection with the regular payment of wages, the number and nature of infringements observed, and the number and nature of penalties imposed, as well as similar information on criminal cases involving non-payment or delayed payment of wages;

(iii) the extent to which and the manner in which the schedules for the payment of wage arrears in educational establishments and the federal public budget sector are put into effect.

Observations received from workers' organizations

Since the Committee's previous session, further comments have been received concerning the application of *Article 12(1) of the Convention* (Regular payment of wages) from various workers' organizations as follows. The Federation of Independent Trade Unions of Russia (FNPR) indicates, in a letter dated 21 March 1997, that the total wage debt of enterprises of all forms of ownership has passed the threshold of 50 "trillion" (as in the original letter in English) roubles (over US$9 "billion" (idem)), thus bringing the country to the verge of a social explosion, and that nearly all trade unions of Russia were joining in the Day of Protest later that month. The International Confederation of Free Trade Unions (ICFTU) and the International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) submitted with their letter of 28 August 1997 ample documentation prepared by the Independent Coal Employees' Federation of Russia and the Russian Chemical and Allied Industries Workers' Union. The attached documents include not only communications from sectoral trade unions, referring to the situation of wage arrears in their sectors, such as the chemical industry, the timber and related industries, and oil and gas, but also records of proceedings of various meetings held regarding the issue of wage arrears by high officials of the Government. Just to quote some examples, the Central Committee of the Timber and Related Industries Workers' Union of Russia indicates that the wage arrears increased in 1996 by 2.9 times to reach 1,523,000,000,000 roubles; the Trade Unions of the Workers of the Oil and Gas Branches of Industry and Construction note that the wage arrears in the industries of the oil and gas complex amounted to 8,100,210,000,000 roubles as of 1 February 1997. The Russian Chemical and Allied Industries Workers' Union states that wage arrears in the branches of industries covered by it amounted to 1,362,000,000,000 roubles, and also notes that cases were revealed where the funds were manipulated by banks in the interest of certain persons instead of spent on the needs of the enterprises.

Information supplied by the Government

The Committee notes that the Government transmitted several communications in response. In the communication received in October 1997, the Government indicates that the total wage arrears stood at 54,300,000,000,000 roubles as at 1 September 1997, of which 45,100,000,000,000 roubles (83.5 per cent) were owed in the production sectors and 8,900,000,000,000 roubles (16.5 per cent) in the social sector (paid out of the state budget). According to the Government, while the amount of wage arrears constantly increased in the first half of the year, there had been a positive trend in the last two months: the figure decreased by 738,000,000,000 roubles in July and 204,000,000,000 in August.

The Government further indicates that 81.2 per cent of the wage arrears are attributable to the fact that enterprises and organizations lack their own resources, and the remaining 18.7 per cent is due to the inadequate financing of budgets at all levels. While in the social sphere 86.7 per cent of wage arrears are due to the lack of direct financing out of budget, the corresponding figure in the industrial sectors is only 5.2 per cent. Of the total arrears for the production sectors, 60.4 per cent is owed in industry (among the branches, 8,600,000,000,000 roubles in the energy sector, of which 3,200,000,000,000 is in the coal sector), 15.8 per cent in construction, 16 per cent in agriculture, and 7.6 per cent in transport. In the social sphere, 48.7 per cent is owed in educational establishments and 32.5 per cent in health care establishments. Some 96,700 enterprises and organizations owe wages, including 50,900 in the production sector and 45,800 in the social sphere. In another communication received on 28 November 1997, the Government adds that the wage arrears in educational institutions fell in comparison with the preceding period by 14.1 per cent to a figure of 4,374,000,000,000 roubles.

As to the *measures taken* to settle wage arrears and to ensure timely payment of wages, the Government mentions several Presidential Decrees and Orders, and also a procedure for cooperation between the bodies of the executive branch in the exchange of information on the financial status of organizations in arrears in the payment of wages, approved by the Ministry of Labour and other concerned ministries on 8 August 1997, as well as a draft government Order on priority measures to settle wage arrears in the sector of the economy that is not financed out of the budget, which was communicated to the Government on 24 September 1997. The Government also mentions large figures of amounts provided as financial assistance to the constituent territories.

As to the measures for *supervision*, the Government states that, in the first half of 1997, the Russian labour inspectorate carried out checks in more than 22,000 organizations, in which some 14,500 flagrant violations of wage legislation were revealed. More than 20,000 formal instructions were issued to rectify infringements through administrative audits of enterprises and organizations, which resulted in the payment of wage arrears in several regions. Following the instructions of the Provisional Extraordinary Presidential Commission (Protocol of 8 July 1997, No. 8) the labour inspectorate, together with the Ministry of Finance, investigated federal executive authorities and territorial bodies regarding the use of funds from the federal budget for the purpose of paying wages, during which cases of inappropriate use were discovered in 27 of the constituent territories.

Concerning *penalties*, the Government mentions in its communication of December 1996 a draft federal Act introducing criminal liability for gross violations in connection with delayed payment of wages, but no further information has been received on this point. As regards the *timetables for settling wage arrears*, the Government's communication of October 1997 only refers to the fact that such timetables have been drawn up regarding educational establishments, the coal industry and the scientific sector, and contains no information on their implementation.

Conclusions

The Committee notes that, in spite of the measures so far taken by the Government, there is no evidence of definite improvement in the situation of wage arrears since the figures cited by the Government as the decrease in July and August 1997, put together, do not reach even 2 per cent of the total wage debts outstanding at the beginning of September 1997.

The Committee notes that the Government recognizes, in its communication of October 1997, the necessity of a package of measures, including both urgent measures and those aimed at improving the economy as a whole: to strengthen supervision and liability of officials for the timely payment of wages, including labour inspection and supervision by the public prosecutor's office, and involvement of trade unions; to ensure compliance with the Order of 22 February 1997 increasing the liability of state representatives on the boards of joint stock companies for the timely payment of wages to their employees; to expedite the adoption of the Act to amend the Code of Administrative Offences and the Penal Code, which is before the State Duma (the lower house of Parliament), among other things. It notes however that these indications appear to be more statements of general principles rather than information on concrete and specific measures taken by the Government.

The Committee shares the concern expressed by the above committee set up by the Governing Body over the gravity of the situation and the social consequences of the non-observance of *Article 12(1) of the Convention*. It recalls that the Government is responsible, in terms of the provisions of the Convention, not only for the regular payment of wages directly made out of the federal budgets, but also to ensure the payment of wages in conformity with the provisions of the Convention to all the workers in the country to whom wages are paid or payable. The Committee has been emphasizing the importance of such means as (i) effective supervision, (ii) imposition of appropriate penalties to prevent and punish infringements, and (iii) steps to make good the prejudice suffered. In all these three aspects, the information supplied so far by the Government does not give the impression that all possible measures have been exhausted.

The Committee therefore urges the Government to make its clear commitment to put an end to this violation of the Convention and to take all necessary measures to ensure the payment of wages on time and the rapid settlement of wage arrears already outstanding, and to continue to supply information on them and their results. It asks the Government to supply, in particular, concrete information on the supervision, penalties and the settlement of wage arrears, including texts of any relevant legislation, such as the one on the enhancement of penalties. The Committee would urge the Government to include information on any decision made by courts of law or other tribunals concerning the question of regular payment of wages.

The Committee earlier noted the Government's indication that a Bill had been adopted to amend the Labour Code concerning sanctions for violation of the Code, in particular in the case of unpaid or late payment of wages and that a law was adopted in third reading by the Duma concerning the compensation paid to the citizens for material loss for unpaid or late payment of wages. In the absence of information, it again asks the Government to include detailed information on this or similar legislative measures in its report.

In the absence of a reply to the previous observation concerning other provisions of the Convention such as: *Article 3* concerning the prohibition of payment with promissory notes or coupons; *Article 4* concerning the regulation of payment in kind; *Article 11* on the treatment of wages as privileged credit in the case of bankruptcy; and *Article 15* on the sanctions in case of violation, the Committee requests the Government to indicate measures taken or envisaged to ensure not only the regular payment of wages but also the application of all the provisions of the Convention. It also requests the Government to include, for instance, extracts from official reports that show the number of investigations made, infringements observed and penalties imposed.

The Government is also asked to refer to the points raised in the direct request, which the Committee is repeating since no reply has been made for a few years.

[The Government is asked to supply full particulars to the Conference at its 86th Session and to report in detail in 1998.]

Turkey (ratification: 1961)

The Committee notes the observation made by the Turkish Municipal and General Workers' Union (BELEDIYE-IS, Diyarbakir Department) concerning the application of the Convention in their region, especially in towns which Kurds live in great numbers, where workers of municipalities have not received regular payments for a period of up to three to four years.

The Committee notes the comments of the Government on this issue received during its session. The Government underlines that in the above observation, neither any concrete example of alleged violation is given nor any specific municipality, workplace or trade union member whose rights are violated is referred to, making it impossible for the Government to comment on the matter. It adds that for the same reason, it is impracticable for the competent authorities to initiate an inspection to verify the issue and to react accordingly. According to the Government, the competent authorities nevertheless requested, upon the receipt of the above observation through the ILO, Diyarbakir branch office, to supply particulars in order to make a thorough examination of the case. The Government stresses that, while six inspections were carried out in southern and eastern regions since 1 January 1997 upon complaints of BELEDIYE-IS, none of them was from the Diyarbakir branch. The Government considers that the national legislation concerning the wages and the frequency of its payment is in conformity with the Convention, and that the labour inspectorate acts promptly on any complaints of violations of labour laws.

Regarding the application of *Article 12 of the Convention*, the Committee noted in the previous observation, in relation to the observation made by the Confederation of Turkish Trade Unions (TÜRK-IŞ), the importance, for the effective application of the Convention, of the supervision of the compliance in practice with the national provisions giving effect to it, including appropriate provision and imposition of penalties for infringements. It again requests the Government to supply, in accordance with *Article 16 of the Convention and point V of the report form*, information on the application of the Convention in practice, with particular reference to the municipalities, the agricultural sector and the small commercial and artisanal enterprises. The Committee asks the Government to provide, in particular, information on the numbers of inspections made, infringements of the relevant provisions observed and penalties imposed.

[The Government is asked to report in detail in 1998.]

Ukraine (ratification: 1961)

Further to its previous observation concerning the application of *Article 12(1) of the Convention* (regular payment of wages), the Committee notes the Government's detailed report and other communications, the information supplied by the Government to the Conference Committee on the Application of Standards in June 1997 and the discussions which took place in that Committee.

Comments made by workers' organizations

The Committee also notes the comments received from various workers' organizations on the non-payment or delayed payment of wages: the Central Committee of the Ukrainian Trade Union of Educational and Science Employees noted, in a comment received during the Committee's previous session, that their appeals, protests and negotiations with the Government had not led to any positive results; the Central Trade Union Committee of Geology, Geodesy and Cartography Workers of Ukraine states in their comment received in April 1997 that the Government's debt to the workers of the sector has grown to 25.8 million grivnyas (13.5 million US dollars); the Crimean Republican Trade Union Committee of Health Care Workers of Ukraine indicates in the comment received in April 1997 that no wages have been paid for more than five months; and the Kharkov Committee of the Trade Union of the National Academy of Science observes in the communication dated 9 July 1997 that the situation of non-payment of wages to the state employees of the National Academy of Science institutions has not improved, that the debts of the Government to the institutions of Kharkov are equal to wages for about six months, and that the debt repayment for 1996 arranged between the Government and trade unions to be started in May 1997 did not even begin as scheduled.

Measures taken by the Government

The Government transmitted several communications in response. In the communication received in June 1997, the Government indicates the conclusion of a protocol with sectoral trade union federations on 4 April 1997 (signed namely by the president of the Trade Union Federation of Ukraine, and the Chairman of the Ukrainian Committee of the Trade Union of Employees of the National Academy of Science) on the issue of ensuring the prompt payment of wages, payment of wage arrears, giving priority to wage payment, enforcing control over the compliance with the labour legislation. According to the Government, it has taken various measures in accordance with this agreement.

The Government notes in the communication dated 22 August 1997, that the Cabinet of Ministers of Ukraine adopted a comprehensive Resolution No. 879 on 13 August 1997, which envisages the complete (100 per cent) financing of current wage payments, the obligatory allocation of at least 75 per cent of the resources of bodies financed by the state budget to the payment of current wages and the settlement of wage debts, and the preparation of a draft legislation regarding the immediate allocation of grants and subsidies from the state budget to the settlement of wage debts.

According to the Government, the *General Agreement for 1997/98* was signed on 18 October between the Cabinet of Ministers, Ukrainian Union of Industrialists and Entrepreneurs and the associations of trade unions of Ukraine. The parties to this agreement undertook, among other things, to guarantee effective monitoring of laws and other standards concerning the payment of wages, to approve this year the procedure for the compensation of workers for loss of earnings in connection with the non-observance of the deadlines for their payment, and to guarantee the punctual payment of current wages to workers in organizations dependent on the budget.

Penalties and compensation

At the Conference Committee of June 1997, the Government representative stated that, following a decree of the President of Ukraine, the managers of state enterprises are obliged by virtue of their contract to ensure the timely payment of wages and the strict compliance with the timetable for settling wage debts, and that the failure to fulfil this requirement is considered as sufficient grounds for terminating the manager's contract, which actually happened in several sectors as regards a number of managers. In the letter dated 22 August, the Government indicates that it is working on a draft law on the increase of criminal and administrative responsibility of directors of enterprises and organizations for the inappropriate utilization of funds intended for the payment of wages. In the first half of 1997, the courts of law examined over 36,000 private appeals concerning the non-payment of wages, 28.4 million grivnyas were exacted by court decisions in the workers' favour, and at least another 10,000 cases relating to wage debts are under examination. During the same period, the organs of Procuracy revealed approximately 13,000 violations of labour legislation and over 2,000 directors were charged with administrative responsibility.

As to the *supervision*, the Government also provides in the same letter detailed information on the activities of the State Labour Inspectorate, which conducted in the first half of 1997, more than 10,000 inspections: 15,623 violations of labour legislation were revealed, about 6,500 injunctions were issued and 12,500 proposals were made to eliminate the violations. The results of such inspection visits are examined by the Government and transmitted to other ministries concerned as necessary.

Information on the latest situation

At the Conference Committee of June 1997, the Government representative stated that, as a result of the measures taken in accordance with the agreement reached with the trade unions, at that moment, current wages were paid regularly and without delay. He added however that the most serious problem remained the settling of debts accumulated in previous years.

More recently, in a letter dated 6 November 1997, the Government notes the following figures: whereas in the first six months of 1997 the wage arrears increased each month in all sectors of the economy, from July to September they steadily decreased, i.e. by 9.5 per cent for the period. In organizations dependent on the state or local budgets, the wage arrears were reduced by 29.3 per cent in July-October. As a result, the total amount of wages owed at the beginning of October had decreased by 45.7 per cent in educational establishments, 32.4 per cent in cultural organizations, 28.7 per cent in the public health sector, and 23.3 per cent in the domain of social security. At the beginning of October 1997, 22 out of 25 provinces of Ukraine were not only ensuring 100 per cent payment of current wages to workers in the budget sphere, but were also paying off wage arrears in respect of last year's wages.

Information on specific sectors

The Government further supplied information in response to some of the comments made by the workers' organizations noted by the Committee. In the communication dated 19 February 1997, the Government refers specifically to the coal industry and states that various measures, including the creation of an interdepartmental commission composed also of trade union representatives to take operational steps for the timely payment of wages and the Government's financial aid to the coal industry, admitting nevertheless that it was not possible to overcome the state of crisis and to pay all the wage debts which remain rather large.

As to the *scientific organizations*, the Government indicates, in the letter of 6 November, that the wage debts were reduced by 15.4 per cent in the period of July to September, which made possible the full payment of the accumulated wages for the current year.

In a letter dated 18 November 1997, the Government refers to ***the health care workers in Kerch (Crimean Republic)*** and supplied the following information: measures taken include the setting up of the timetable for settling wage debts to municipal workers, and the rule that more than 80 per cent of cash coming into the budget should be used for wage payment and the settlement of wage debts; employees of health institutions receive payments through special bank accounts, where at each transfer, the amount paid in respect of 1996 wage arrears is specified; the amount of wage debts owed to health care personnel stood in October 1997 at 2.6 million grivnyas, including 390,000 grivnyas for 1996, and this amount had decreased in the last three months by 20.6 per cent, and in particular those for 1996 had decreased by 49 per cent.

As to ***the sector of geology, geodesy and cartography***, the Government states the following in another letter dated 18 November 1997: state orders for work in this sector (geology and so on) are decreasing, whereas the number of workers is not decreasing in the same proportion; during the period of July-October 1997, the Government transferred to the enterprises of the sector 10 million grivnyas to cover the current debt for work already performed, which permitted the reduction of the period of delay in wage payments by six months. From September 1997, the contracts of directors in the sector include provisions to make them personally responsible for the payment of wages and the settlement of wage debts according to the timetable, the failure of which may cause their dismissal. The State Labour Inspectorate suggested that the State Committee of Geology and the trade union should conclude the sectoral collective agreement for 1997-98, since the provisions of the 1995 agreement are obsolete and would not solve the problem of wage payment.

Conclusions

The Committee notes that the Government has been taking comprehensive measures in all the three principal aspects mentioned in the previous observation: supervision, appropriate penalties to prevent and punish infringements and steps to make good the prejudice suffered. Various other measures are being taken to ensure the regular payment of wages and the settlement of wage arrears, including economic, financial and tax-related measures aiming at the improvement of financial situations of the enterprises and organizations. Social partners are involved especially in the procedures of supervision.

The Committee notes in particular that, according to the Government, the situation has been improving, as a result of all the measures taken, in the period more recent than that referred to in the comments from the workers' organizations mentioned above. It notes however that the Government has supplied more information in percentages than absolute figures, and it is therefore difficult to appreciate the actual size of outstanding debts due to wage earners.

The Committee recalls that the present problem concerns the implementation in practice of the national labour legislation giving effect to the Convention, which requires a continued effort and a wide range of measures. It requests the Government to continue to provide information on all relevant measures taken to ensure the regular payment of wages and a rapid settlement of wage arrears as well as data showing their results. The Committee asks the Government to refer in particular to any progress made regarding the draft law on penalties on the inappropriate use of funds, and the procedures for compensation of workers' loss from the untimely payments, mentioned above. The Committee also asks the Government to include any information on the actual amount outstanding as wage debts.

[The Government is asked to report in detail in 1998.]

Venezuela (ratification: 1982)

The Committee notes that the Governing Body, at its 268th Session (March 1997), adopted the report of the tripartite committee set up to examine the representation, made under article 24 of the Constitution, in which allegations of non-observance by Venezuela of certain Conventions, including Convention No. 95, were made by the Venezuelan Workers' Confederation (CTV), the Single Central Organization of Workers of Venezuela (CUTV), the General Confederation of Workers of Venezuela (CGT), the Confederation of Autonomous Trade Unions (CODESA), and the National Trade Union of Public Employees and Officials of the Judiciary and of the Council of the Magistracy (ONTRAT).

The Committee notes that the Governing Body invited the Government, in accordance with the recommendations of the above committee, to report on the measures taken to ensure that the allowances paid by virtue of several laws and regulations referred to by the above organizations of workers are covered by the protection provided for in *Articles 3 to 15 of the Convention*.

In response, the Government has supplied a copy of the Tripartite Agreement on Integral Social Security and Wage Policy (ATSSI) dated March 1997, which contains a section on the "salarization" of allowances, noting the following: in the public sector, the allowances received by workers by virtue of decrees and agreements will constitute a part of their wage up to the amount of the minimum wage, and the remaining allowances will be progressively integrated into their wage during the year 1998; in the private sector, the allowances under Decree No. 1240 of 6 March 1996 and No. 617 of 11 April 1995 will form part of wages upon the entry into force of the legal reform, and within the following 12 months the remaining incomes will be converted into wage; and that provisions of the Organic Labour Act which gave rise to the "desalarization" of remuneration, including sections 133, 138 and 146, will be amended with a view to consolidating the wage nature of all the remunerations of the worker.

The Committee notes with satisfaction that the Organic Labour Act was amended in the manner indicated above on 19 June 1997 and, in particular, that its section 133, paragraph 1, now stipulates that the subsidies or facilities which the employer grants to the workers to provide them with goods or services for improving their life bear the character of wages, and that collective agreements or individual contracts may exclude up to 20 per cent of wages in the calculation of benefits, allowances or indemnities arising from the employment relationship. It notes that the amounts excluded from the wage-based calculation by virtue of the latter provision are thus covered by the other provisions of the Act concerning the protection of wage payment.

The Committee requests the Government to supply information on the application in practice of these amended provisions of the Organic Labour Act.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Costa Rica, Djibouti, Libyan Arab Jamahiriya, Russian Federation, Saint Lucia, Sierra Leone, Swaziland, Venezuela.*

Convention No. 96: Fee-Charging Employment Agencies (Revised), 1949

Pakistan (ratification: 1952)

The Committee notes with regret that the report provided by the Government contains no reply to its previous comments. It must therefore repeat its previous observation which read as follows:

> *Part II of the Convention.* 1. The Committee notes the information provided by the Government in reply to its earlier comments. The Government states, as in its previous reports since 1987, that the provincial governments have been urgently asked for their views and comments on the draft Rules under the Fee-Charging Employment Agencies (Regulation) Act, 1976, and that every effort is being made to accomplish this work. The Committee observes, however, that the Act has not yet been brought into operation. With reference to the comments the Committee has been making over a number of years on the same subject, it trusts that the Government will not fail to take the necessary measures with a view to bring the Act into operation in the nearest future in order to give legislative effect to the requirement of the Convention concerning the abolition of fee-charging employment agencies "within a limited period of time", but not "until a public employment service is established" *(Article 3 of the Convention)*.
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> 2. In its previous comments, the Committee noted the observations made in October 1993, and reiterated in October 1994, by the All-Pakistan Federation of Trade Unions stating that effective measures should be taken regarding supervision of agencies for recruiting workers abroad. It asked the Government to make its comments on the matters raised in these observations. The Government states in its reply that the present socio-economic conditions in the country do not permit it to abolish overseas employment-promoting agencies. The Government describes the arrangements made under the Emigration Ordinance of 1979 and Rules made thereunder for supervision of the Overseas Employment Promoters, the licensing system and the fixing of fees they are allowed to charge. The Committee notes this information. It would be grateful if the Government would continue to supply, in its future reports, any relevant information on the fee-charging employment agencies for which exceptions are allowed under *Article 5* of the Convention, as required under *Article 9* of the Convention (number of agencies concerned, scope of their activities, reasons for the exceptions, supervision of their activities).
>
> 3. The Committee reiterates its request to the Government to give a general appreciation of the manner in which the Convention is applied, including, for instance, extracts from official reports, information regarding the number and nature of the contraventions reported, and any other particulars bearing on the practical application of the Convention, as required by *point V of the report form*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

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In addition, a request regarding certain points is being addressed directly to the *Netherlands*.

Convention No. 97: Migration for Employment (Revised), 1949

Malaysia

Peninsular Malaysia (ratification: 1957)
Sarawak (ratification: 1964)

1. The Committee notes that the Government's report has not been received. It notes, however, the detailed discussion which took place at the 1997 Conference Committee particularly on Malaysia's application of *Article 6 of the Convention* (payment of compensation in respect of employment injury and invalidity).

2. The Conference Committee concluded that the level of benefit in case of industrial accident was lower for foreign workers than for nationals. It stressed that equality of treatment between nationals and foreign workers could not be bargained away, even with the consent of the workers, and that legislative amendments which had been adopted only served to increase the ceiling on lump-sum benefits and did not provide for periodic payment. It once again insisted that the Government adopt necessary measures so that foreign workers benefited from the same conditions as nationals. That Committee asked the Government to furnish detailed information to the Committee of Experts and hoped to be in a position to look at the case again in 1998, if it was judged appropriate.

3. In the absence of a report from the Government, the Committee must repeat its previous observation which read as follows:

> *Article 6, paragraph 1(b), of the Convention.* In its previous comments, the Committee noted that accident compensation coverage for foreign workers has been transferred from the Employees Social Security Scheme (governed by the Employees Social Security Act, 1969) to the Workmen's Compensation Scheme (governed by the Workmen's Compensation Act, 1952) as of 1 April 1993, and that the level of benefits in case of industrial accident provided under the Workmen's Compensation Scheme is substantially lower than that provided under the Employees Social Security Scheme. Consequently, it had hoped that the Government would take the necessary steps in the near future to place foreign workers back under the Employees Social Security Scheme under the same conditions as nationals, thereby providing equal treatment under the law for compensation for industrial accidents. This case was also discussed during the 1996 session of the Conference Committee, which drew similar conclusions.
>
> The Government points out in its report that certain categories of nationals are not covered under the Employees Social Security Act; that the States sending migrant workers to Malaysia endorse the removal of foreign workers from the Employees Social Security Act; and that foreign workers voluntarily consent to this arrangement when accepting work in Malaysia. Furthermore, it states that the Workmen's Compensation Act has been amended.
>
> The Committee notes this information. It would first like to clarify that the principle of equality of treatment between nationals and non-nationals concerning workers' compensation as provided for under Article 6, paragraph 1(b), of the Convention, cannot be bargained away, even with the consent of the worker. As to the endorsement of the arrangement by the States sending migrant workers to Malaysia, only two types of arrangements are respectively provided for under *Article 6, paragraph 1(b)(i) and (ii)*, concerning on the one hand "the maintenance of acquired rights and rights in course of acquisition", and on the other hand "benefits or portion of benefits which are payable wholly out of public funds, and ... allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension". In the present case, these provisions are not applicable.
>
> Secondly, the Committee points out that the amendment to the Workmen's Compensation Act merely increases the ceiling on lump-sum benefits and does not transform the benefit into a periodic payment equivalent to that provided under the Employees Social Security Act.

> Therefore, in the light of the fundamental importance of the principle of equality of treatment concerning workers' accident compensation the Committee cannot but once again express the hope that the Government will take the necessary measures in the near future, such as by placing foreign workers back under the scope of the Employees Social Security Act in the same conditions as nationals, in order to ensure that the benefit foreign workers receive for work injury is equal to that paid to nationals.
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> See also the comments made in the observation concerning the application of Convention No. 19.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Dominica, Mauritius, Saint Lucia*.

Convention No. 98: Right to Organise and Collective Bargaining, 1949

Argentina (ratification: 1956)

The Committee notes the report supplied by the Government. It also notes the observations made on the application of the Convention by the Union of United Maritime Workers (SOMU) on 20 November 1996 and 6 January 1997, and by the Bank Association (AB) on 20 November 1996. Similarly, the Committee notes that in December 1996, Decrees Nos. 1553/96 and 1554/96 on collective labour agreements were issued.

1. *Article 1 of the Convention.* The Committee observes that the Bank Association states that the Government is not complying with the provisions of Act No. 23523 of 28 September 1988 which grant preferential treatment for admission to previous employment for bank workers who were dismissed on political or trade union grounds between 1 January 1959 and 10 December 1983. In this respect, the Committee observes that the Committee on Freedom of Association has already taken a decision on this matter and refers to this Committee's conclusions of March 1997 in which it indicated the following: "recalling once again the importance it attaches to the effective implementation of Act No. 23523, the Committee requests the Government to continue to make all efforts to find a negotiated solution as quickly as possible" (see 306th Report, Case No. 1723, paragraphs 12, 13 and 14).

2. *Article 4 of the Convention.* The Committee recalls that for many years it has criticized the legal provisions relating to the granting of official approval by the Ministry of Labour for the validity of collective agreements which go beyond enterprise level; for the purposes of official approval consideration must be given not only to whether a collective labour agreement contains clauses violating the public order standards of Acts Nos. 14250 and 23928, but also whether it complies with the following criteria: productivity, investment, and the introduction of technology and vocational training systems (section 3 of Act No. 23545, section 6 of Act No. 25546 and section 3ter of Decree No. 470/93).

In this respect, the Committee notes that the Government states that the question relating to the approval to be granted by the labour authorities, together with the contents of the collective agreements analysed prior to the granting of approval, should be dealt with in a draft legislative reform. Similarly, the Committee notes that the Government states that the influence of the State, through the granting of approval, has been significantly reduced as a result of the increase in collective bargaining at enterprise level, and that Decree No. 1334/91 which links wage negotiation to an increase in productivity is virtually revoked by Decree No. 470/93 for a wide range of conventional activities.

In these circumstances, the Committee expresses the hope that the draft reform on collective bargaining to which the Government refers will eliminate the provisions which place conditions on the official approval necessary from the administrative authorities for collective agreements going beyond enterprise level, and which are linked to criteria of productivity, investments and the introduction of technology and vocational training systems. The Committee requests the Government to send it a copy of the draft legislation with its next report.

3. The Committee observes that in December 1996 the Government issued Decree No. 1553/96 which authorizes the Ministry of Labour and Social Security to revoke, in part or in whole, the official approval of a collective agreement if the provisions thereof conflict with the legal rules issued after approval has been granted and if, once the agreed period has expired, the Ministry considers that the validity of the agreement no longer meets the requirements of section 4 of Act No. 14250. The Committee considers that this Decree confirms and expands the intervention of administrative authorities in collective bargaining, something which has already been criticized under point (2).

Furthermore, the Committee observes that in December 1996, Decree No. 1554/96 was also issued and provides that in cases where parties do not reach agreement on the sectors to be covered by negotiations of a collective agreement, this shall be decided by the Ministry of Labour which must not exceed the minimum scope proposed. In the Committee's opinion, this implies that between a proposal for negotiation at the level of industry or branch of activity and a proposal for negotiation at enterprise level, in the absence of an agreement between the parties, a decision is taken within the enterprise sector and is imposed by the administrative authority concerned. In this respect, the Committee emphasizes that in drawing up the Convention, the principle of *voluntary* collective bargaining and the level of negotiation should not be conditioned or imposed by legislation or by a decision of the administrative authority, but should depend essentially on the will of the parties concerned.

The Committee has learnt that certain provisions of the Decrees referred to appear to have been declared as unconstitutional by courts of first and second instances and that a decision is currently expected from the Supreme Court of Justice. The Committee notes that in its report the Government states that the General Confederation of Workers (CGT) [as part of a complaint made to the Committee on Freedom of Association on the same question (Case No. 1887)] and the Ministry of Labour and Social Security have requested that the legal proceedings be suspended for a period of 120 days, a request which has been accepted by the judicial authority; it also notes that the Decrees have not been applied.

The Committee requests the Government to take measures to amend the legislation in order to bring it into full conformity with *Article 4 of the Convention* and to provide information in its next report on all measures adopted in this respect.

4. Finally, the Committee observes that the Union of United Maritime Workers (SOMU) states in its observations that, following the repeal of 62 collective agreements in 1992 under Executive Authority Decrees Nos. 817/92 and 1264/92, from 1994 onwards it has endeavoured to conduct negotiations with a view to concluding collective agreements in the sector (with the enterprise United Tugs of Argentina for crew members of vessels sailing under flags of convenience and for those continuing to sail under the Argentine flag; with the Buenos Aires sand and stone sector and the coastal river navigation sector; and with the Argentine Chamber of Owners of Freezer Fishing Vessels), but that the employer in this sector refuses to negotiate without the administrative authorities having

adopted measures in this respect. In this connection, the Committee recalls the principle of good faith in negotiations and requests the Government to mediate between the parties in order to help them find common ground.

Australia (ratification: 1973)

The Committee notes the information provided in the Government's report, in particular regarding the extensive legislative changes at the federal and state levels. The Committee also notes the comments submitted by the Australian Council of Trade Unions (ACTU) and the Australian Chamber of Commerce and Industry (ACCI) regarding the recently enacted Workplace Relations Act, 1996, which has considerably altered the legislative foundation of industrial relations at the federal level.

The Committee notes that information regarding the application of the Convention in Victoria, Tasmania and the Australian Capital Territory has not been included in the Government's report, and requests the Government to forward this information. The Committee further requests the Government to forward any court or commission decisions regarding the recently enacted legislation. The Committee received a further communication from the Government of Australia but it was received too late to be considered.

Federal jurisdiction

The Workplace Relations Act, 1996

The Committee observes firstly that this major restructuring of the law governing workplace relations is enshrined in a long and complicated statute. The Committee hopes that simplified summaries will be available to the employers and especially to the workers concerned. Its aims are to promote cooperative workplace relations and its principal objects in this respect are set out succinctly and with clarity in section 3. The Act establishes an Australian Industrial Relations Commission which is to have an important role in overseeing the application of the statute and dealing with problems and disputes that arise.

Article 1 of the Convention. 1. The Committee notes that protection against dismissal is provided for under section 170CK(2)(b) of the Act based on trade union membership or participation in trade union activities outside working hours or, with the employer's consent, within working hours. Pursuant to section 170CC(1), however, regulations may exclude certain employees from specified termination of employment provisions, including employees on contracts of employment for a specified period of time or a specified task, employees on probation or engaged on a casual basis or those "in relation to whom the operation of the provisions causes or would cause substantial problems because of (i) their particular conditions of employment, or (ii) the size or nature of the undertakings in which they are employed". Section 170CC(3) and (4) appear to provide that where employees pass a threshold of remuneration (now set at A$64,000 pursuant to Regulation 30BB), they can be disqualified from protection under the termination of employment provisions. The Committee also takes note of a recent amendment proposed to the Act through the Workplace Relations Amendment Bill, 1997, that excludes new employees of small businesses (employing 15 employees or less) from the unfair dismissal provisions.

2. The Committee recalls that under *Article 6 of the Convention* only public servants engaged in the administration of the State may be excluded. The Committee requests the Government to indicate in its next report how the above-noted legislative provisions have been applied and which groups of workers, if any, have been excluded

from which provisions of the Act. It would appreciate receiving information as to whether and how adequate protection in accordance with ***Article 1 of the Convention*** is provided for these workers in other legislation. The Committee also requests clarification regarding the relationship between section 170CC(1) and sections 170CC(3) and (4), and recalls that the protection of ***Article 1*** cannot be restricted due to the rate of remuneration received prior to the termination. The Committee also requests the Government to keep it informed of the status of the Workplace Relations Amendment Bill, 1997. The Committee requests the Government to ensure that employees of small businesses are adequately protected as required by the Convention, and to inform it of any steps taken in this regard.

3. The Committee notes that further protection from discrimination on the ground of trade union activities is provided under sections 170MU and 298K of the Act. Pursuant to Part IVB, Division 8, in particular section 170MU, an employer is prohibited from dismissing or otherwise prejudicing an employee in his or her employment on the basis of the employee's participation in "protected action". "Protected action", as defined in section 170ML, is industrial action taken regarding the negotiation of a single-business certified agreement, and does not extend to a multiple-business agreement due to section 170LC(6) which excludes multiple-business agreements from the scope of Division 8. Section 298K also protects employees from discrimination in employment, in this case where such discrimination is based on "prohibited reasons", which are defined in section 298L to include membership in an industrial association and some specific activities, but does not appear to cover the negotiation of multiple-business agreements. In short, it appears to the Committee that the full scope of trade union activities is not covered. The Committee requests the Government to take the necessary measures to ensure that workers are adequately protected against discrimination based on trade union activities, including negotiating a collective agreement at whatever level the parties deem appropriate.

Article 4. 4. The Committee notes that one of the principal objects of the Act, as set out in section 3(b), is "ensuring that the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the workplace or enterprise level". This emphasis on direct employee-employer relations is particularly evident in Part VID of the Act regarding Australian workplace agreements (AWAs), which are defined in section 170VF: "an employer and employee may make a written agreement, called an Australian workplace agreement, that deals with matters pertaining to the relationship between an employer and employee". This Part promotes AWAs, which are essentially individual in nature, over collective agreements, through simpler filing requirements in comparison with the collective certification procedure, the advice and assistance of the Employment Advocate and giving AWAs primacy over federal awards and state awards or agreements, and over certified agreements, unless the certified agreement is already in operation when the AWA comes into operation (section 170VQ). Once there is an AWA in place, a collective agreement certified under the Act cannot displace it. In addition, under Part XV of the Act, providing for the extension of the provisions of the Act to the State of Victoria, when a collective employment agreement ceases to be in force, it is replaced by "an individual employment agreement with the same terms" (section 516). The Committee concludes that primacy is clearly given to individual over collective relations through the AWA procedure. The Committee considers that the provisions of the Act noted above do not promote collective bargaining as required under *Article 4 of the Convention*. It, therefore, requests the Government to indicate in its next report any steps taken to review these provisions of the Act and to amend it to ensure that it will encourage collective bargaining as required by *Article 4 of the Convention*.

5. The Committee notes that with respect to the levels of bargaining, a clear preference is given in the Act to workplace/enterprise-level bargaining, as evidenced in section 3(b), as noted above, as well as section 88A(d) which charges the Australian Industrial Relations Commission with exercising its functions and powers regarding awards in a manner "that encourages the making of agreements between employers and employees at the workplace or enterprise level". Regarding certified agreements, Part VIB of the Act sets out a series of provisions facilitating single-business agreements, and giving them priority over multiple-business agreements. Section 170L states that the object of the part "is to facilitate the making, and certifying by the Commission, of certain agreements, particularly at the level of a single business or part of a single business". Preference for enterprise-level bargaining is also evidenced in sections 170ML and 170MU which, as noted above, provide some protection in the case of industrial action taking place during the bargaining period for certified agreements. However, due to section 170LC(8), this protection is not afforded with respect to the negotiation of multiple-business agreements. The Committee also notes that a multiple-business agreement can only be certified pursuant to section 170LC if it is found to be "in the public interest to certify the agreement" taking into consideration whether the matters could be more appropriately dealt with in a single-business agreement. In short, the determination of what level of bargaining is considered appropriate is placed in the hands of the Commission, which is mandated to give primary consideration to single-business agreements and to use the criterion of "the public interest". The Committee is of the view that conferring such broad powers on the authorities in the context of collective agreements is contrary to the principle of voluntary bargaining.

6. The Committee recalls that, since the Convention contemplates *voluntary* collective bargaining, the choice of the bargaining level should normally be made by the partners themselves, and the parties "are in the best position to decide the most appropriate bargaining level" (see General Survey on freedom of association and collective bargaining, 1994, paragraph 249). The Committee requests the Government to review this issue and amend the legislation in the light of the requirements of the Convention.

7. Regarding the subjects of negotiation, the combined effect of sections 166A, 187AA and 187AB prohibit the issue of strike pay being raised as a matter for negotiation. Considering that in general the parties should be free to determine the scope of negotiable issues (see General Survey, op. cit., paragraph 250), the Committee requests the Government to review and amend these provisions to ensure conformity with the Convention.

8. With reference to the provisions of the Act in Part VIB requiring majority approval of a certified agreement, the Committee recalls that where no trade union represents a majority of the workers, the unions should be able to negotiate an agreement at least on behalf of their own members (see General Survey, op. cit., paragraph 241).

9. The Committee requests clarification regarding section 170LL of the Act which appears to permit an employer of a new business to choose which organization to negotiate with prior to employing any persons. The Committee recalls that the choice of bargaining agent should be made by the workers themselves; section 170LL appears to allow the employer to preselect the bargaining partner on behalf of the potential employees, regardless of whether or not that union will ultimately be truly representative of the workers finally employed.

10. The Committee considers that it is obvious that the impact of the legislation will not be fully clear for several years. The role of the Industrial Relations Comission will be crucial in this development. It is important that such natural evolution be carefully

monitored to ensure that the spirit of the Convention is maintained. The Comittee would welcome regular reports on future developments.

Queensland

The Committee notes the recent adoption of the Workplace Relations Act, 1997, and the Industrial Organizations Act, 1997. As affirmed in the Government's report, the Committee notes that the Workplace Relations Act of Queensland is closely based on the Federal Workplace Relations Act. While there are differences between some of the provisions of the Queensland legislation and the provisions referred to above by the Committee in relation to the federal legislation, they are sufficiently similar, that the Committee recalls its above comments in the context of the Queensland legislation. The Committee refers in particular to the corresponding provisions in the Workplace Relations Act, 1997, in Chapter 2 on certified agreements and Queensland Workplace Agreements, Chapter 5 on dismissals, and Chapter 6 on industrial disputes, and in the Industrial Organizations Act, 1997, in Part 14 on freedom of association.

New South Wales

The Committee notes that certain categories of employees are excluded, or permitted to be excluded through regulation, from the unfair dismissal provisions under Part 6 of the Industrial Relations Act, 1996 (sections 83(1)(a) and 83(2)). These exclusions and potential exclusions are set out in similar terms as section 170CC(1), (3) and (4) of the Federal Workplace Relations Act, 1996, referred to above; the Committee, therefore, refers to its comments above on this matter. Also with reference to *Article 1 of the Convention*, the Committee requests the Government to indicate in its next report how the phrase "public or political activity" in section 210 has been defined, and if, in particular, protection from victimization on this basis protects workers from discrimination on the basis of trade union activities.

Regarding the system of enterprise agreements provided for under the Act, the Committee requests the Government to indicate in its next report whether and to what extent collective bargaining can and does take place at levels other than the enterprise level. The Committee notes that pursuant to section 36(4), an enterprise agreement has no effect until, inter alia, it is approved by 65 per cent of employees who are to be covered by the agreement. The Committee recalls that where no union or group of unions has majority support, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their own members, and requests the Government to indicate in its next report whether and to what extent unions can and do bargain collectively when the 65 per cent approval rate is not attained.

South Australia

The Committee notes the recent amendments to the Industrial and Employee Relations Act, 1994. Regarding the system of enterprise agreements provided for under the Act, the Committee, as in the context of New South Wales, requests the Government to indicate in its next report whether and to what extent collective bargaining can and does take place at levels other than the enterprise level.

Western Australia

The Committee notes the recent adoption of the Labour Relations Legislation Amendment Act, 1997, which amends the Industrial Relations Act, 1979, the Workplace Agreements Act, 1993, and the Minimum Conditions of Employment Act, 1993.

Industrial Relations Act, 1979, as amended. The Committee notes that pursuant to Part VIA of the recently amended Industrial Relations Act of Western Australia, while there is some protection against discrimination on the basis of trade union membership, no provision addresses discrimination based on trade union activities, as required under the Convention. The Committee recalls that specific remedies and penalties against anti-union discrimination are needed to ensure the effective application of *Article 1 of the Convention.*

The Workplace Agreements Act, 1993, as amended. The Committee notes that the Act, as recently amended, establishes a system of contracts between an employer and an employee or a group of employees. The preference given through this system to individual agreements over collective agreements is evidenced in a number of provisions: (i) the Act overrides the Industrial Relations Act, 1979, generally (section 4) and the awards system specifically (section 6); (ii) although the Act contemplates agreements with a group of employees (collective workplace agreements), trade unions may be party to such an agreement in a limited sense, for example a trade union is not a party in determining the provisions to be included in the agreement (sections 11(3) and 16(2)); (iii) specific provision is made to allow individual workplace agreements to override collective workplace agreements, but not the converse; (iv) protection from common law liability under tort and contract conferred concerning workplace agreements (section 77) is denied in the context of the Industrial Relations Act, 1979 (section 97B). The Committee concludes that the Workplace Agreements Act, and its interrelation with the Industrial Relations Act, does not create a system whereby collective bargaining is effectively promoted.

The Committee requests the Government to take the necessary measures to ensure the full application of the Convention at the federal and state levels, and to keep it informed of any progress.

Bangladesh (ratification: 1972)

The Committee notes the information provided by the Government in its report.

The Committee's previous comments referred to discrepancies between national legislation and the Convention on the following points:

- obstacles to voluntary bargaining in the private sector (sections 7(2), 22 and 22A of the Industrial Relations Ordinance, 1969 (IRO)). The Committee had pointed out that collective bargaining is not developed in small establishments because sections 7(2), 22 and 22A of the IRO appear to inhibit the establishment of "sectoral" or "industry" unions; it therefore had requested the Government to take the necessary steps to remove the requirement: (a) in section 7(2) that, in order to be registered under the IRO, a trade union must have a membership of at least 30 per cent of the total number of workers in the establishment or group of establishments in which it is formed; and (b) in sections 22 and 22A of the IRO that only unions which are registered in accordance with section 7 may become collective bargaining agents;
- restrictions on voluntary bargaining in the public sector (section 3 of Act No. X of 1974), in particular through the practice of determining wage rates and other conditions of employment by means of government-appointed Wages Commissions;
- lack of legislative protection against acts of interference guaranteed by *Article 2 of the Convention*;
- denial of the rights guaranteed by *Articles 1 (protection against anti-union discrimination), 2 (protection against acts of interference), and 4 (right to bargain*

collectively) of the Convention for workers in export processing zones (section 11A of the Bangladesh Export Processing Zones Authority Act, 1980).

The Committee notes that, in its report, the Government repeats more or less the same arguments that it raised in previous reports to deny the existence of the above violations or, alternatively, to justify them.

The Committee would once again remind the Government that the above discrepancies between national legislation and the Convention, which the Committee has commented on in detail for several years, constitute serious violations of the Convention, which was ratified in 1972. The Committee notes the Government's statement that it is re-examining the draft Labour Code submitted by the National Labour Law Commission. In its most recent observation, the Committee had noted that the recommendations of the National Labour Law Commission, which was tripartite in nature and included eminent legal experts, dealt with all the points previously raised by the Committee. In re-examining the draft Labour Code, the Committee would strongly encourage the Government to take into consideration the Committee's previous detailed comments on discrepancies between national legislation and the Convention. The Committee requests the Government to inform it of any progress made in the preparation of this draft Labour Code in its next report and invites it to consider technical assistance from the ILO.

Belize (ratification: 1983)

The Committee notes the Government's report indicating in response to its previous direct request that no measures have presently been taken to adapt monetary penalties in the light of inflation for anti-union discrimination.

The Committee notes that for several years it has requested the Government to ensure that workers enjoy adequate protection against anti-union discrimination, in particular by providing adequate sanctions. The Committee refers the Government to paragraph 224 of its General Survey on freedom of association and collective bargaining, 1994, which underlines the importance of providing sufficiently dissuasive sanctions to ensure the practical application of provisions prohibiting acts of anti-union discrimination. It recalls that the sanctions that may be imposed upon an employer found guilty of anti-union discrimination against workers may not exceed $250 or a period of imprisonment of not more than six months (Labour Ordinance, Chapter 234, section 199). Given that the monetary penalties have not been adapted in the light of inflation and do not exert a sufficiently dissuasive effect against acts of anti-union discrimination, the Committee requests the Government to take measures in order to amend the legislation to ensure that it is in full conformity with the Convention. The Committee requests the Government to indicate in its next report the measures it has taken or envisages in this regard.

Bolivia (ratification: 1965)

Please see the comments made under Convention No. 87.

Brazil (ratification: 1952)

The Committee notes the Government's report.

The Committee also notes the comments made by the Sindicato dos Arrumadores de São Sebastião and the Sindicato dos Estivadores de São Sebastião of June 1997 on the application of the Convention and requests the Government to include its observations on the matter in its next report.

Article 4 of the Convention. The Committee recalls that in its previous observation it referred to section 8(2) of Interim Provision No. 1079 containing supplementary provisions to the "Real Plan" (the Economic Stabilization Plan adopted in 1994), which provides that in the event that no substitute price index has been established, and where the parties have not agreed on one, a measure of the price index covering the whole nation shall be used as set out in regulations to be issued by the Executive Authority. In this respect, the Committee notes that the Government indicates in its report that section 8 of the Interim Provision in question (currently No. 1540-25 of 11 June 1997, not No. 1079) does not apply to collective agreements, to which section 10 applies and provides that wages and other conditions of employment shall continue to be determined through free collective bargaining.

In this regard, observing that section 10 of the Interim Provision mentioned in the previous paragraph provides that wages shall be determined by free collective bargaining, the Committee requests the Government to inform it as to whether this Interim Provision has temporarily suspended section 623 of the "Consolidation of Labour Laws" (CLT), as amended by Act No. 5584 of 26 June 1970 and Legislative Decree No. 229 of 28 February 1967, which section confers extensive powers on the authorities to cancel collective agreements or arbitration awards that are not consistent with the rules set by the Government's wages policy which have been criticized by the Committee for several years. In any event, given that the Government stated in a report of 1996 that section 623 of the CLT is merely "virtual" and has not been applied in recent years, the Committee requests the Government to repeal formally this provision which restricts free collective bargaining.

Articles 4 and 6 of the Convention. Furthermore, the Committee recalls that in a previous direct request it referred to the need for the Government to take measures to encourage and promote the full development and use of machinery for voluntary negotiation with a view to regulating by means of collective agreements the terms and conditions of employment for public servants not engaged in the administration of the State (in 1994 the Government indicated that the Supreme Federal Court had declared unconstitutional section 240(d) of Act No. 8112 of 1990 which granted public servants this right). On this subject, the Committee notes the Government's information that various measures designed to carry out administrative reform at the federal level are before the National Congress. The Committee expresses the hope that the measures which it is intended to adopt provide that public servants who are not engaged in the administration of the State shall enjoy the right to collective bargaining of their conditions of employment. The Committee requests the Government to inform it in its next report of any measures adopted in this matter.

Finally, the Committee notes the Government's information that various Bills on collective bargaining are at various stages of consideration. On that, the Committee requests the Government to inform it in its next report of the progress of the Bills in question and to send it copies of them as soon as they are adopted.

Cameroon (ratification: 1962)

The Committee notes the information provided in the Government's report.

It recalls that since the adoption of the Labour Code in 1992, it has been asking the Government to amend or repeal sections 6(2) and 166 of the Labour Code, under which a fine of Frs.50,000 to 500,000 may be imposed on members responsible for the administration or management of a non-registered union, who act as if the union were registered. In this context it notes the Government's statement to the effect that amendment of the Labour Code to this effect is envisaged. The Committee expresses the firm hope that the Government will take the necessary measures to repeal these provisions, in order to ensure that founders and leaders of trade unions being established enjoy adequate protection against acts calculated to cause prejudice by reason of their participation in union activities, which are contrary to the provisions of *Article 1 of the Convention*. The Committee once again asks the Government to supply with its next report the text of any measures taken in this respect.

Cape Verde (ratification: 1979)

The Committee notes the report made by the Government.

With reference to its previous comments, the Committee regrets to observe that the Government reiterates that it has not been possible to send the texts of agreements concluded, since workers' and employers' organizations have not availed themselves of the possibilities offered by national legislation for collective bargaining.

In this respect, the Committee once again reminds the Government that in ratifying the Convention it had undertaken to adopt appropriate measures to *encourage and promote* the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. Under these conditions, the Committee requests the Government to take the measures necessary to implement the provisions of *Article 4 of the Convention* and hopes that in its next report the Government will be able to provide copies of the texts of collective agreements concluded, be they at national, regional or local level.

Chad (ratification: 1960)

The Committee notes the Government's report. It also notes the Labour Code (Act No. 38/PR/96 of 11 December 1996) and the observations made on the Code by the Trade Union's Confederation of Chad.

The Committee notes with interest that the Labour Code which has been under consideration for many years has been adopted. The Committee requested that several provisions regarding certain forms of intervention by the administration in the collective bargaining process be amended as well as those concerning previous authorization regarding the entry into force of a collective agreement. It notes with interest that these provisions have disappeared from the new Code and that, according to the Government, collective agreements will henceforth be "self-executing".

The Committee notes that by virtue of sections 346 and 247 of the Code, the Minister of Labour may make observations on the collective agreements deposited and demand that negotiations be reopened. The Committee wishes to recall on this matter that, in all cases, the parties should remain free in regard to their final decision. It requests the Government to supply, in its next report, detailed information on the application of these provisions, indicating the subject of the observations of the Minister, the number of cases for which reopening of negotiations was requested and the results.

Colombia (ratification: 1976)

The Committee notes the report made by the Government.

The Committee recalls that for many years it has been emphasizing the need for public employees who are not engaged in the administration of the State to benefit from the right to collective bargaining, and that in its previous observation it noted that a Bill guaranteeing this right for public employees had been submitted to the Congress of the Republic.

In this respect, the Committee regrets to note that the Government states that the Congress of the Republic decided to shelve the Bill in question. Similarly, the Committee notes that the Government states that the Ministry of Labour is studying the various alternatives for granting such a right to public employees. The Committee expresses the hope that the Government will, as soon as possible, take measures to bring the legislation into conformity with the Convention. The Committee requests the Government to provide information in its next report on all measures adopted in this respect.

Furthermore, the Committee recalls that in previous direct requests it referred to: (1) the need for industrial or branch unions to comprise more than 50 per cent of the workers in an enterprise in order to be able to bargain collectively (section 376 of the Labour Code, paragraph supplemented by section 51 of Act No. 50); and (2) the right for federations and confederations to bargain collectively.

In this respect, while the Committee observes that the Government has not forwarded its observations on the questions raised, the Committee requests the Government to take measures to amend the legislation so as to guarantee industrial or branch unions which do not comprise more than 50 per cent of the workers concerned the possibility to bargain collectively, at least in representing their members. The Committee requests the Government to inform it in its next report of any measures adopted in this respect.

Finally, the Committee requests the Government to inform it whether federations and confederations may bargain collectively and, if so, to indicate on what legal basis such a right is founded.

Furthermore, the Committee is addressing a direct request to the Government.

[The Government is asked to report in detail in 1998.]

Costa Rica (ratification: 1960)

The Committee notes the Government's report and the recent comments made by the Inter Confederal Committee of Costa Rica (CICC) on the application of the Convention, in which it confirms the relevance of the Committee's comments. The Committee observes that these comments have been sent to the Government to enable it to forward its observations in this respect.

The Committee recalls that its previous comments referred to the non-recognition of the right to collective bargaining for public servants not engaged in the administration of the State, and that in its previous observation it had noted that a Bill on the Status of the Civil Service had been submitted to the Legislative Assembly for approval, which envisaged the right to bargain collectively and to strike in the public sector.

The Committee observes that in its report for 1996 the Government reiterates that the draft in question is being examined by the Legislative Assembly. In these circumstances, observing that more than three years have already elapsed since the draft was submitted, the Committee expresses the hope that the Government will take the necessary measures in the very near future, be they through the adoption of the draft in question or by any other means, in order to bring the legislation into full conformity with the Convention. The Committee requests the Government to keep it informed of all developments in this respect and to send it copies of all the relevant texts adopted.

With reference to its previous comments recommending that the Government take measures in order to accelerate the investigation procedures whenever complaints are made concerning anti-union acts, for the purposes of providing effective protection for enterprise workers in free trade zones and other sectors, the Committee notes that the Government has forwarded a copy of a letter which it sent in December 1995 to the National Directorate of the Labour Inspectorate, the Directorate General for Labour Affairs and the Legal Affairs Directorate, instructing them to take measures in accordance with the recommendation made by the Committee. Notwithstanding this, given that the CICC refers to cases of anti-union discrimination, consideration of which has continued for years without being completed, the Committee requests the Government to take new measures to ensure that the procedures applicable in cases of anti-union discrimination are accelerated and to inform it accordingly.

Côte d'Ivoire (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the adoption of Act No. 95/15 of 12 January 1995 issuing the Labour Code (*Journal officiel*, 23 February 1995, No. 8, pp. 153-177).
>
> *Articles 1 and 2 of the Convention.* With reference to its previous comments concerning the need to ensure adequate protection for workers against acts of anti-trade union discrimination and of workers' organizations against acts of interference on the part of employers, enforceable by sufficiently effective and dissuasive sanctions, the Committee notes with interest that the Labour Code provides that no employer may take into consideration membership or non-membership of a trade union or trade union activities of workers for making decisions regarding, in particular, recruitment, conduct and distribution of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of the employment contract (section 4) and that no employer may exert pressure against or in favour of any workers' trade union organization (section 51.3) and that violations of the Labour Code are liable to fines (section 100.4).
>
> Nevertheless, the Committee considers on this last point that whereas section 100.5 punishes with sufficiently dissuasive sanctions the offences comprising measures of anti-union discrimination against *trade union delegates* and *staff delegates* (fines of 10,000 to 100,000 francs and imprisonment from two months to one year or one only of these two sanctions), the sanctions for anti-union discrimination against *workers* or for acts of interference by employers in workers' organizations should be strengthened.
>
> The Committee requests the Government to indicate in its next report the measures taken or envisaged to strengthen the provisions for protecting workers and workers' organizations in this respect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Croatia (ratification: 1991)

The Committee takes note of the information furnished by the Government in response to its previous observation.

However, the Committee understands that, in a decision of 7 December 1995, the Supreme Court has stated that a law can modify the substance of a collective agreement concluded for the whole of the public sector.

The Committee recalls in this respect that under the terms of *Article 4 of the Convention*, the public authorities should promote collective bargaining. Moreover, this provision emphasizes the voluntary nature of negotiation. In the Committee's view, the intervention of the public authorities in the implementation of collective agreements constitutes a violation of this provision.

The Committee requests the Government to provide information on this decision of the Supreme Court and on the measures taken to ensure the promotion of collective bargaining in the public sector with regard to public servants not engaged in the administration of the State who are covered by the Convention.

Democratic Republic of the Congo (ratification: 1969)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the conclusions of the Committee on Freedom of Association in Cases Nos. 1818 and 1833, approved by the Governing Body in November 1995 and March 1996 respectively.
>
> *Articles 1 and 2 of the Convention.* The Committee notes the information communicated by the Government that sections 228 and 229 of the Labour Code (Legislative Order No. 67/310 of 9 August 1967) provide workers with adequate protection against all acts of discrimination liable to hinder freedom of association in respect of their employment and compels workers' and employers' organizations to refrain from any acts of interference by each other in their establishment, functioning or administration. While noting that section 49 of the Labour Code provides that termination without a valid reason of a contract of indeterminate duration gives the worker the right to compensation, the Committee requests the Government once again to provide information on how protection is provided in practice against acts of anti-union discrimination during employment and protection against acts of interference by an *individual employer*, and, specifically, to supply a copy of any judicial decision handed down in these matters.
>
> In addition, the Committee notes with concern that the cases examined by the Committee on Freedom of Association relate, inter alia, to allegations of acts of anti-union discrimination and acts of interference in union activities.
>
> Recalling that in its previous reports the Government had indicated that a draft Labour Code was being drawn up, the Committee requests the Government to indicate in its next report whether the Labour Code has been amended and, if so, to send it a copy of the text.
>
> *Article 4.* The Committee notes that the allegations in the aforementioned cases, examined by the Committee on Freedom of Association, relate specifically to the refusal to undertake negotiations with the staff of a public service (Case No. 1833) and the refusal to grant certain representative trade unions access to a joint commission responsible for salary negotiations in the public services in general and the health services in particular (Case No. 1818). The Committee, like the Committee on Freedom of Association, requests the Government to take steps to encourage and promote machinery allowing for the negotiation of conditions of employment between the public authorities and workers' organizations, including in the public sector enterprises. It asks the Government to keep it informed in this regard.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Denmark (ratification: 1955)

The Committee notes the Government's report. Furthermore, the Committee notes that in a communication of 19 June 1996, the Danish Confederation of Professional Associations (AC) stated that it had reached an agreement with the Government relating to the job offer scheme for unemployed persons participating in training programmes, an issue which in fact had already been raised by the AC before the Committee.

1. In its previous comments, the Committee had noted that section 10 of Act No. 408 of 1988 limited the negotiating power of the Danish trade union organization to persons who were considered to be residents of Denmark, or who by virtue of

international obligations were to be put on an equal footing with Danish citizens. It expressed regret that this section of the Act did not aim at encouraging and promoting voluntary negotiation between employers' and workers' organizations, and at allowing workers who were employed aboard Danish ships, but who were not residents of Denmark, to join the organization of their own choosing to defend their interests. The Government indicates in its report that shipowners and a number of organizations of seafarers have concluded an agreement concerning the coverage of collective agreements in relation to foreign seafarers. The Government emphasizes the need to carry out a study and to have a broad discussion in the ILO on international registers or second registers. The Government is asked once again to indicate in its next report any measures taken or contemplated to bring section 10 of the Act into full conformity, in this respect, with *Article 4 of the Convention*.

2. Concerning the issues raised before the Committee on Freedom of Association in Case No. 1725, and the comments of the Danish Union of Journalists in relation to the extension of an agreement to the entire sector of activity contrary to the views of the organization representing most of the workers in the category covered by the extended agreement, the Committee notes the Government's intention to present a Bill to the next parliamentary session in this regard. The Committee notes that according to the Government's report, in the few fields which had not been able to negotiate a new agreement in 1997, a compromise was reached by the public conciliator after having consulted the parties. The Committee hopes that the legislation will be amended so as to bring it into full conformity with *Article 4*.

Dominican Republic (ratification: 1953)

The Committee takes due note of the information provided by the Government in its report.

The Committee recalls that in previous comments it referred to the lack of collective agreements in export processing zones. In this respect, it notes the information provided by the Government indicating that eight new collective agreements have been concluded in such zones.

Furthermore, the Committee also referred to the requirement for an absolute majority of workers in an enterprise or of workers employed in a particular branch of activity to be represented in order for a trade union to be able to bargain collectively (sections 109 and 110 of the Labour Code). The Committee observes that in its report the Government states, with reference to comments made previously by the National Union of Agricultural Workers of Sugar Plantations concerning the refusal of the State Sugar Board to negotiate a collective agreement, that the refusal is based on the fact that an absolute majority of the workers in the enterprise is not represented in the trade union in question for the purposes of negotiating a collective agreement.

In this respect, the Committee considers that the requirement for an absolute majority of workers in an enterprise or branch of activity to be represented, in order for a trade union to be able to bargain collectively, is excessive and, in many cases, may constitute an obstacle to collective bargaining or even make it impossible. The Committee requests the Government to take the measures necessary to amend the provisions of the Labour Code, in order to encourage and promote free collective bargaining, by reducing the majority required for negotiations, or at least by allowing a sufficiently representative minority union to conclude collective agreements on behalf of it members.

Ecuador (ratification: 1959)

The Committee notes the Government's report.

The Committee observes that the Government requested the technical assistance of the Office to bring the legislation into conformity with the provisions of the Convention and that a mission visited the country from 4-10 September 1997. The Committee notes with interest that during the mission one Bill was drafted providing for the repeal or amendment of certain legislative provisions commented on by the Committee in its previous observations and direct requests.

Specifically the Committee observes that the draft Bill in question provides for (i) the repeal of section 1 of Decree No. 2260 which imposes the previous advice of the National Secretariat of Administrative Development on draft collective agreements in the public sector; and (ii) the addition to section 3, paragraph (g), of the Act pertaining to the Civil Service and Administrative Careers whereby workers in official departments or other public sector institutions as well as private sector institutions in the social or public spheres are covered by the Labour Code, thereby enabling these workers to enjoy the right to organize and the right to bargain collectively.

Moreover, the Committee notes that according to the mission report, teaching staff and heads of educational institutions as well as those who carry out technical and professional functions in the education sector are subject to the laws pertaining to education and the salary scales of teachers referred to in section 3(h) of the Civil Service and Administrative Careers Act, and therefore do not enjoy the right to organize and to bargain collectively.

Finally, the Committee recalls that in its previous observation it had requested the Government to take measures: (i) to include in its legislation provisions which guarantee protection against acts of anti-union discrimination at the time of recruitment; and (ii) to amend the unnumbered section in the Labour Code (which figures at the end of section 230) relating to the submission of a draft collective agreement which provides in its second paragraph that "in public sector institutions, entities and enterprises or those in the private sector in the social or public sphere, in which no works committees exist, the workers subject to the Labour Code shall set up a sole central committee, be it on the national, regional, provincial or branch level, as appropriate, established by more than 50 per cent of the said workers" so that when minority trade unions do not meet this percentage, they may, on their own or jointly, negotiate at least on behalf of their own members.

After having taken note of the mission report and the Government's report, the Committee finds it surprising that the Government does not mention in its report the draft Bill drawn up during the technical assistance mission. In these circumstances, the Committee must insist that the Government take the necessary measures as soon as possible to bring its legislation and practice into conformity with the Convention. The Committee expresses the firm hope that the Government will transmit information in its next report on any progress made relating to these questions raised for the past several years.

[The Government is requested to supply full particulars to the Conference at its 86th Session.]

Egypt (ratification: 1954)

The Committee notes the Government's report.

The Committee recalls that, for a number of years, it has been drawing the Government's attention to the need to amend section 87 of the Labour Code, as amended by Act No. 137 of 1981, which provides that any clause of a collective agreement which is liable to impair the economic interests of the country shall be null and void. The Committee had observed that such a requirement restricts the scope of collective bargaining and is liable to undermine the principle of voluntary negotiation contained in *Article 4 of the Convention*. It indicated that in the event of economic difficulties the Government should resort to persuasion rather than constraint and that in any event the parties must remain free as to their final decisions.

The Government states that these points have been taken into consideration in the formulation of the draft consolidated Labour Code, Book IV, Chapter III, which is devoted to collective labour agreements, and does not contain any provision corresponding to section 87 of the existing Labour Code, Act No. 137, 1981.

The Committee notes the Government's statement that it will provide a copy of the new Act as soon as it is adopted and published.

Ethiopia (ratification: 1963)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Articles 4 and 6 of the Convention*. The Committee notes that the Constitution of 8 December 1994 grants civil servants the right to organize and to conclude agreements with their employers (section 42). The Committee observes that the Government indicates in its report that specific legislation is being prepared to this end and will be sent to the ILO as soon as it is promulgated.
>
> The Committee requests the Government to indicate in its next report any progress made towards adoption of legislation ensuring the recognition, both in law and in practice, of the right to voluntary negotiation of employment conditions for public servants, with the sole possible exception of those engaged in the administration of the State.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Fiji (ratification: 1974)

The Committee notes the information supplied by the Government in its reports, as well as the information provided to the Conference Committee in June 1996 and the detailed discussion which took place thereafter. It further notes the observations made by the Fiji Trades Union Congress (FTUC) in a communication dated 24 September 1996 and the reply of the Government thereto.

1. *Article 2 of the Convention*. In its previous comments, the Committee had stressed the need to adopt specific measures, particularly through legislation, to guarantee adequate protection (accompanied by sufficiently effective and dissuasive sanctions) to workers' organizations against any act of interference by employers or their organizations.

In its communication of 24 September 1996, the FTUC points out that although a subcommittee had been established to come up with proposals for consideration of the Labour Advisory Board in July 1996, there has been no fruitful conclusion to date. The Government responds that a subcommittee of the Labour Advisory Board had been set up on 8 July 1996 to discuss changes proposed by the Ministry of Labour and Industrial Relations on the revision of the current system of labour reforms. This subcommittee, which subsequently held two meetings, would issue a report to the Labour Advisory Board at its final meeting in 1996.

The Committee requests the Government to provide information in its next report on the contents of the 1996 report of the subcommittee of the Labour Advisory Board with regard to the measures to be taken to guarantee adequate protection to workers' organizations against acts of interference by employers or their organizations. In view of the fact that the Committee has been commenting on this issue for several years, it expresses the firm hope that the Government will take the necessary measures in the very near future to ensure full compliance with the Convention on this point.

2. *Articles 3 and 4*. (a) In relation to the FTUC's comments that the Vatukoula Joint Mining Company has had recourse to delaying tactics and challenged the report of the Commission of Inquiry concerning the refusal by the company to recognize an independent registered Fiji Mineworkers' Union, the Government states that it cannot intervene since the matter is now before the court. The Committee requests the Government to keep it informed of the court's decision in the matter of the Vatakoula mines once it has been handed down.

(b) In response to the Committee's previous comments that the Trade Union (Recognition) Act was silent as to the position of a representative union which did not cover 50 per cent of the employees in a bargaining unit, the Government had pointed out that the amendment of this Act had led to a multiplicity of unions in one undertaking all of which were granted bargaining rights. The Committee requests the Government to submit in its next report the provisions of the Trade Union (Recognition) Act which have been amended to extend collective bargaining rights to the representative unions in a bargaining unit even when none of them covers 50 per cent of the employees in this unit.

3. *Article 4*. The Committee had noted previously that section 10 of the Counter-Inflation (Remuneration) Act allowed for the restriction or regulation, by order of the Prices and Incomes Board, of remuneration of any kind, and stipulated that any agreement or arrangement which did not respect these limitations would be illegal and deemed to be an offence. The Committee had considered, however, that the powers vested under the Act in the Prices and Incomes Board did not meet the criteria for acceptable limitations on voluntary collective bargaining and had asked the Government to keep it informed of any application in practice of section 10 of the Act.

The Government states in its report that the object of section 10 of the Act is to curb the upward spiralling of wages. In its comments, the FTUC points out that the Government refused to go to voluntary arbitration on the log of claims of the unions to which the Government replies that collective bargaining has not been affected to the stage alleged, as free collective bargaining is allowed on other conditions except for wages.

While noting the Government's explanation on this point, the Committee must recall that if, under an economic stabilization or structural adjustment policy, for compelling reasons of national economic interest wage rates cannot be fixed freely by means of collective bargaining, restrictions should be applied as an exceptional measure and only to the extent necessary, should not exceed a reasonable period and should be accompanied by adequate safeguards to protect effectively the standard of living of the workers concerned (see General Survey on freedom of association and collective bargaining, 1994, paragraph 260). Since these wage ceilings date back to 1986, the Counter-Inflation (Remuneration) Act cannot be considered to be an exceptional measure introduced for a reasonable period of time. Since the criteria for acceptable limitations on voluntary collective bargaining do not appear to have been met, the Committee would accordingly ask the Government to take the necessary measures to amend section 10 of the Act in order to ensure full compliance with the Convention on this point.

4. The Committee takes note of the comments made by the Fiji Trade Union Congress (FTUC) in a communication dated 17 September 1997. It requests the Government to provide its observations thereon.

Finland (ratification: 1951)

1. The Committee notes the information in the Government's report and the observations of the Central Organization of Finnish Trade Unions (SAK) and the Confederation of Unions for Academic Professionals (AKAVA) transmitted by the Government in its report. It also notes the Finnish Local Government Act of 1996.

The AKAVA made comments according to which since 1993 it has been possible to make local agreements deviating from the nationwide collective agreements; this situation would have resulted in arrangements implying notices and lay-offs for those not covered by the agreements. The Committee notes that the Government explains that overall, local collective agreements have been used for the purpose of avoiding redundancies and lay-offs and that the authorities are unaware of any instance where local agreements have resulted in redundancies in breach of the Convention. The Committee understands that the Government will continue to monitor the situation.

In its previous observation, the Committee had mentioned the indication by SAK that, under section 35 of the Municipality Act, the right to political involvement of persons participating in trade union activities was restricted. The Committee notes the text of the provision as well as the explanations by the Government that: (1) the disqualification for the election to a municipal board applies only to the chairman of the local employees' organization and the persons negotiating collective agreements with the local authority; (2) these provisions are designed to prevent a conflict of interest.

2. The Committee would appreciate it if the Government could send its comments on the observations by SAK and AKAVA according to which: (a) no collective agreement applies to senior salaried staff in the service sector; (b) this staff should be mentioned in the Collective Agreements Act for collective bargaining purposes.

Germany (ratification: 1956)

The Committee notes the Government's report. Following its previous observations, it also notes the conclusions of the Committee on Freedom of Association in Case No. 1820 (see 302nd Report, paragraphs 80 to 111, approved by the Government Body at its March 1996 session).

As regards teachers, the Committee, referring to the above-mentioned Case, notes that the Committee on Freedom of Association stressed that "teachers do not carry out tasks specific to officials in the State administration; indeed this type of activity is also carried out in the private sector. In these circumstances [it] stresses the importance that teachers with civil servant status should enjoy the guarantees provided for under Convention No. 98." The Committee on Freedom of Association further stated that "within the framework of the public service regulations (in which Parliament adopts legislation in the final instance), it might be necessary for collective bargaining to be conducted by means of special procedures and in this respect, Convention No. 98 allows a certain flexibility ... Therefore, within the overall framework of public service regulations established by the Constitution and German legislation, it should be possible, while maintaining the budgetary prerogatives of the legislature, to find a formula which would not only allow for a mere hearing but also the possibility for teachers with civil service status to bargain collectively."

The Committee notes that the Government states in its report that the procedure for the participation of central trade union organizations in the general regulation of conditions for civil servants pursuant to section 94 of the Civil Servants Act is the object of an agreement between the Federal Ministry of the Interior and the central organizations of the relevant trade unions, which was concluded in 1993 and revised in 1996. The Government adds that similar agreements exist in the Länder. It is therefore of the view that the participation of the central trade union organizations in the regulation of working conditions for civil servants in Germany, while differing from the collective bargaining that takes place for employees in the private and public sectors, occurs in such a manner that there is no violation of *Article 4 of the Convention*.

While taking due note of the Government's comments, the Committee recalls that it could not allow the exclusion from the terms of the Convention of large categories of workers employed by the State merely on the grounds that they are formally placed on the same footing as public officials engaged in the administration of the State and who, by the functions, are directly employed in the administration of the State — such as, for example, civil servants employed in Government ministries and other comparable bodies (see 1994 General Survey on freedom of association and collective bargaining, paragraph 200). The Committee considers, like the Committee on Freedom of Association, that teachers carry out duties different from officials in the state administration; indeed, this type of activity is also carried out in the private sector and therefore teachers with civil servant status should enjoy the guarantees provided for under Convention No. 98.

In the light of the above comments, the Committee would invite the Government, together with the trade union organizations concerned, to study ways in which the current system could be developed so as to ensure a proper application of the Convention.

Ghana (ratification: 1959)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> With reference to the Ghana Trades Union Congress's (TUC) observations on the redundancies which took place at the Ghana Cocoa Board under the terms of the Ghana Cocoa Board (Re-organization and Indemnity) Law, 1985 Provisional National Defence Council (PNDC) Law 125, the Committee notes the Government's statement that action has been initiated to repeal the law in question. This process, however, entails submission of a cabinet memorandum and the eventual submission of a draft bill to Parliament which has the responsibility for repeal of legislation.
>
> The Committee would request the Government to provide it with the text of the repealing legislation once the process described above has been completed.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Guatemala (ratification: 1952)

The Committee notes the report made by the Government and Legislative Decree No. 35-96 on the Regulation of Strikes by State Workers. Similarly, the Committee notes the observations made by the Confederation of Trade Union Unity of Guatemala (CUSG) objecting to the provisions of the above decree.

The Committee recalls that in a previous direct request it referred to section 2(d) of the Regulation for the procedures of negotiation, official approval and rejection of collective agreements, dated 19 May 1994, which requires a draft collective agreement to be submitted to the General Labour Inspectorate together with the certification of the fact that the General Assembly of the trade union in question voted, by a majority of two-thirds of its total membership, to authorize those serving on its executive committee to conclude, approve and endorse, subject to a referendum or definitively, the draft agreement. In this respect, although it notes that the Government states that this provision has not caused difficulties for the negotiation of collective agreements on working conditions, the Committee considers that the required percentage is too high and that it could well obstruct the conclusion of collective agreements. The Committee considers that it is up to trade union organizations to stipulate in their rules the relevant requirements and that, in any event, the percentage of voters required by legislation should be limited to a simple majority. The Committee requests the Government to take measures to amend the regulations in question as indicated and to provide information in its next report on the measures adopted in this respect.

With regard to Legislative Decree No. 35-96 on the Regulation of Strikes by State Workers, the CUSG claims that the autonomy of the parties to collective bargaining is restricted under the provisions of section 2(a), which provides that bargaining in respect of collective agreements or Conventions shall take into account the legal possibilities of the general state income and expenditure budget. In this respect, the Committee considers that the wording of the provision does not appear in itself to be incompatible with the principles of collective bargaining. Notwithstanding, the Committee considers that in order to allow the parties freely to conclude an agreement, a mechanism should be established whereby, within the collective bargaining process in the public sector, trade union organizations and employers are adequately consulted so as to be able to express their points of view as soon as possible to the financial authorities, so that these authorities may take due account of them. Consequently, the Committee requests the Government to take the measures necessary to amend the legislation as indicated and to provide information in its next report on the measures adopted in this respect.

Finally, the Committee observes that in its communication, the CUSG criticizes inter alia the following provisions of the Legislative Decree referred to: (1) section 2(b) which provides that where proof of having exhausted direct means is not provided, there will be no follow-up to the settlement of the dispute in question, thereby obliging a judge *ex officio* to adopt the measures necessary for proving this state of affairs; and (2) section 2(c), second paragraph and c(1) relating to acts which do not constitute reprisals within a collective dispute (resignation of a worker, legal grounds for justified dismissal and the withdrawal of labour in essential services). The Committee considers that the provisions to which objections were raised do not violate the Convention.

Haiti (ratification: 1957)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee recalls that in its previous observations it had asked the Government to indicate progress made in: (i) the revision of section 34 of the Decree of 4 November 1983, which confers on the Service of Social Organizations the power to intervene in the preparation of collective agreements; and (ii) the adoption of a specific provision providing for protection against anti-union discrimination at the time of recruitment as well as for the reinstatement of workers dismissed on grounds of legitimate trade union activities.
>
> The Committee notes that the Government indicates in its report that section 34 of the Decree of 4 November 1983 is being amended and that the adoption of specific provisions providing for protection against anti-union discrimination is being reviewed. The Committee requests the Government to take the necessary steps to bring its legislation into conformity with the Convention, particularly by repealing section 34 of the Decree of 4 November 1983

> and by adopting provisions guaranteeing workers adequate protection against acts of anti-union discrimination, coupled with effective and expeditious procedures and with sufficiently dissuasive sanctions to ensure their application. The Committee requests the Government to keep it informed of any developments in this regard.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Iceland (ratification: 1952)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the conclusions of the Committee on Freedom of Association in Case No. 1768 [299th Report of the Committee, approved by the Governing Body at its 263rd Session (June 1995)].
>
> 1. The Committee refers to its previous comments on the need for the Government to refrain from intervening in agreements that have been freely concluded by the social partners since this impairs the rights of workers and employers to freely negotiate terms and conditions of employment. The Committee notes with interest the Government's statement that acting partly on the Committee's suggestion, the Minister of Social Affairs appointed a Working Party on 4 October 1994 to examine the rules governing industrial relations in the labour market as well as in Iceland's neighbouring countries, and to submit a report on its conclusions. If these revealed a need for changes in Icelandic legislation in this area, the party was to submit proposals for amendments. The Government adds that the Working Party consists of seven representatives. Two are from the Icelandic Federation of Labour, one from the Federation of State and Municipal Employees, one represents the Minister of Finance, one represents the Association of Cooperative Employers and one the Confederation of Icelandic Employers. The party is chaired by the representative of the Minister of Social Affairs. The Ministry of Social Affairs requested technical assistance of the ILO regarding the matters to be dealt with by the Working Party.
>
> The Committee would request the Government to keep it informed of the conclusions adopted by this Working Party, including proposals, if any, for amendments to the rules governing industrial relations.
>
> 2. The Committee further notes that with respect to the 1995 wages and terms agreements, the employers and trade unions had decided to enter into tripartite agreements involving the Government, as had been done before. Agreements, which would be valid for two years, were concluded on 21 February 1995 between the Confederation of Icelandic Employers and the Association of Cooperative Employers, on the one hand, and the main national associations within the Icelandic Federation of Labour on the other. The two main aims of these agreements are to change the wage distribution to the advantage of the lower paid, while keeping the overall wage increases within the framework of the increases in Iceland's neighbouring countries. The average wage increase resulting from these agreements is estimated as being 3.6 per cent during 1995 and 3.1 per cent in 1996. The Government points out that these agreements will remain in force until the end of 1996, but notice of termination may be given as from 31 December 1995 if price-level changes in Iceland differ substantially from those in its main competitive countries. If notice of termination is given, the wage increases provided for in 1996 will not be implemented.
>
> In this respect, the Committee would remind the Government that in its view, it would be contrary to the principles of Convention No. 98 to allow the provisions of a collective agreement to be cancelled on the grounds that they run counter to the Government's economic policy [see 1994 General Survey on freedom of association and collective bargaining, para. 265]. The Committee therefore trusts that the wage increases provided for in 1996 under the 1995 wages and terms agreements will be implemented. It requests the Government to keep it informed of developments thereof in its next report.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Indonesia (ratification: 1957)

The Committee takes note of the Government's report, as well as of the information supplied to the Conference Committee in June 1997 and the detailed discussion which took place thereafter. The Committee further notes with concern the gravity of the allegations of acts of anti-union discrimination submitted to the Committee on Freedom of Association in Case No. 1773, and the conclusions of this Committee in its most recent report in this case (see 308th Report, approved by the Governing Body at its 207th Session (November 1997)).

The Committee recalls that its comments concerned the following points:

- the need to strengthen the protection of workers so as to cover acts of anti-union discrimination at the time of recruitment or during the employment relationship (including dismissal and other forms of prejudicial action, such as transfers or demotions) accompanied by sufficiently effective and dissuasive sanctions *(Article 1 of the Convention)*;
- the need to adopt specific legislative provisions to protect workers' and employers' organizations against acts of interference by each other *(Article 2)*;
- the restrictions imposed on the right to bargain collectively in the public and private sectors, especially the restriction on free collective bargaining still imposed by Regulation No. 03/MEN/1993 on registered trade unions, whereby only workers' organizations covering at least 100 units at the plant level, 25 organizations at the district level and five organizations at the provincial level, or 10,000 members throughout Indonesia, may conclude collective agreements.

The Committee notes that the Government merely indicates in its report how legislation as well as various regulations currently in force adequately protect the rights guaranteed by the Convention. Moreover, the Committee notes with concern that the provisions of the final draft of the Indonesian Labour Bill of 1997 do not ensure a better protection of the rights guaranteed by the Convention.

1. *Protection against acts of anti-union discrimination*. The Committee notes that under the terms of article 30 of the above draft Labour Bill, employers are prohibited from preventing workers from establishing trade unions at the company level or federations at the sectorial level and from becoming leaders and members thereof. Article 172 carries penalties of imprisonment and fines for whoever violates article 30. However, the Committee would recall that *Article 1 of the Convention* guarantees workers adequate protection against acts of anti-union discrimination at the time of recruitment and during the employment relationship including at the time of termination, and covers all measures of anti-union discrimination (dismissals, transfers, demotions and any other prejudicial acts). The Committee therefore would ask the Government to take the necessary measures to ensure that the draft Bill provides expressly for such protection before it is adopted. It requests the Government to inform it of any progress made in this regard in its next report.

2. *Protection of workers' and employers' organizations against acts of interference by each other*. The Committee notes with regret that the draft Labour Bill does not contain any provision to protect workers' organizations from acts of interference by the employer. The Committee would recall that *Article 2 of the Convention* aims to protect workers' and employers' organizations against acts of interference by each other in their

establishment, functioning or administration. This provision particularly aims to protect workers' organizations against acts of interference intended to promote the establishment of these organizations under the domination of employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or their organizations. The Committee therefore would ask the Government to take the necessary measures to ensure that the draft Bill provides for such protection. It requests the Government to inform it of developments thereof in its next report.

3. *Restrictions on collective bargaining*. The Committee notes that articles 48 and 49 respectively of the draft Labour Bill stipulate that a collective agreement shall be jointly made by the employer and the registered trade union and that such an agreement shall only be negotiated and established by the trade union supported by the majority of the workers within the company concerned. The Committee notes, however, that article 33(1) of the draft Bill stipulates that trade unions at the plant level as well as federations shall be registered in accordance with prevailing legal regulations and that this draft Bill does not appear to contain any provision repealing Ministerial Regulation No. 03/MEN/1993 which provides that, to be registered, a trade union must have at least 100 units at plant level, 25 organizations at the district level and five organizations at the provincial level; alternatively, it must have at least 10,000 members throughout Indonesia (section 2(a)). Section 2(b) provides that a federation must comprise at least ten such unions in order to be registered. The Committee would recall that these requirements are so stringent as to constitute a major obstacle to collective bargaining. The Committee would therefore request the Government to indicate in its next report whether Ministerial Regulation No. 03/MEN/1993 will be repealed by this draft Bill once it enters into force and, if this is not the case, to ensure that it is repealed so that impediments to free collective bargaining can in effect be removed.

Moreover, the Committee reiterates its request to the Government to provide a copy of Act No. 8 of 1974 which regulates the terms and conditions of employment of public servants.

The Committee expresses the firm hope that the Government will take the necessary measures to ensure that its legislation, including the draft Indonesian Labour Bill of 1997, is brought into conformity with the provisions of the Convention in the very near future. The Committee reminds the Government that the Office remains at its disposal to provide technical assistance in this regard.

Iraq (ratification: 1962)

The Committee notes the Government's report.

It recalls that it has been asking the Government to take specific measures to ensure that the Convention is applied.

Articles 1 and 4 of the Convention. The Committee had observed that the Labour Code (No. 71 of 1987) and Act No. 52 of 1987 respecting trade union organizations contain no provisions to ensure the application of *Articles 1 and 4 of the Convention*. It notes that the amendments referred to previously are still under consideration and study and that the Government will provide the text as soon as it is adopted.

The Committee expresses the hope that the amendments will be adopted soon and that they will take into account its comments, so as to introduce into the legislation provisions to the effect of guaranteeing the protection of workers against all acts of anti-union discrimination, enforceable by sufficiently effective and dissuasive sanctions, and to encourage and promote the full development and utilization of machinery for voluntary negotiation of collective agreements in the private, mixed and cooperative sectors.

Articles 1, 4 and 6. The Committee also observed that Act No. 150 of 1987 respecting public servants does not contain specific provisions to ensure that the guarantees of the Convention are applied to public employees not engaged in the administration of the State. It had asked the Government to supply copies of the laws and regulations referred to in the matter and applicable to the State and public enterprises and independent public institutions. It notes the Government's statement that it will provide the requested laws at a later stage.

The Committee had also asked for information on how negotiations are conducted in practice in the above-mentioned establishments (for example number of agreements concluded, number of public employees covered, etc.).

The Committee recalls that public employees (other than those engaged in the administration of the State) should enjoy adequate protection against anti-union discrimination and be granted the right to negotiate their terms and conditions of employment collectively.

The Committee trusts that the Government will take the necessary measures to apply the Convention and that it will provide the above-mentioned texts and information with its next report.

Jamaica (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee recalls that its previous comments concerned the following points:
>
> - the broad powers of the Minister to cause a ballot to be taken to choose the bargaining agent (section 5(1) of the Labour Relations and Industrial Disputes Act, 1975 (No. 14) and sections 3(1) and 3(2) of the regulations issued thereunder), without the right of appeal;
> - the denial of the right to negotiate collectively in the case of the workers in a bargaining unit when these workers do not amount to more than 40 per cent of the unit or when, if the former condition is satisfied, a single union that is engaged in the procedure of obtaining recognition does not obtain 50 per cent of the votes of the workers in a ballot that the Minister has caused to be taken (section 5(5) of Act No. 14 of 1975, and section 3(1)(d) of the regulations issued thereunder).
>
> For several years, the Committee has been requesting the Government to take measures to amend the provisions concerning the procedure for designating a union as bargaining agent so as to eliminate the discretionary powers of the Minister and to enable the workers of a bargaining unit to bargain collectively, even when the conditions relating to the numbers in a trade union and the votes cast in a ballot are not satisfied.
>
> In line with its previous reports, the Government indicates that the actual system of designation of bargaining agent and of collective bargaining receive the full support of the social partners and that no reason would justify the modification of the legislation in this regard.
>
> While noting these statements, the Committee recalls that the Committee on Freedom of Association has examined a complaint from the workers' organizations, to which the right to organize a ballot to show that their union was qualified to bargain with their employer had been refused by the Minister, leaving the workers concerned without any right of appeal to renew their application for the organization of a ballot. The grounds then invoked by the Government were that they represented fewer than 40 per cent of the workers in the

> undertaking (see Case No. 1158 examined by the Committee on Freedom of Association in its 226th Report, paragraphs 303 to 323, and its 230th Report, paragraphs 85 to 102).
>
> Under these circumstances, the Committee reiterates that where conditions concerning the number of members of a trade union or the balloting of workers in a bargaining unit, in the event of a vote, are such that the workers of the unit concerned may be deprived of the right to collective bargaining, when there exists one or more legally constituted unions, the legislation should recognize the right of this or these unions to bargain at least on behalf of their own members. Moreover, the Committee recalls that, if under a system of nominating an exclusive bargaining agent, no union can be designated as representing the required percentage, collective bargaining rights should be granted to the most representative union in the unit.
>
> The Committee urges the Government to indicate the measures that have been taken or are envisaged to bring its legislation into conformity with the Convention (i) to eliminate the discretionary power of the Minister and to guarantee the objectivity of the recognition procedure, and (2) to ensure that the union representing the largest number of workers, even if these do not amount to 40 per cent of the workers in the bargaining unit or the majority of votes in a ballot, is granted collective bargaining rights, concerning terms and conditions of employment, at least on behalf of its own members.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Japan (ratification: 1953)

The Committee notes the Government's report.

1. *Negotiation rights of public employees*. The Committee notes that the Government's report contains no new elements concerning this issue. The Committee recalls its concern that the capacity of public servants not engaged in the administration of the State to participate in the process of wage determination is substantially limited. The Committee again asks the Government to consider the measures that could be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation with a view to the regulation of terms and conditions of employment by means of collective agreements for such employees, in conformity with its obligations under *Articles 4 and 6 of the Convention*, and to inform the Committee of the measures taken in this regard. A request regarding this matter is being addressed directly to the Government.

2. *Exclusion of certain matters from negotiation in state enterprises*. On this point raised by the Committee in previous observations, information has been received from the Japanese Trade Union Confederation (JTUC-RENGO) which has been forwarded to the Government for its comments. The Committee will, therefore, return to this issue once the Government has had an opportunity to respond to JTUC-RENGO's communication.

Jordan (ratification: 1968)

The Committee notes the Government's reports and the Labour Code adopted in 1996.

1. The Committee observes that the new Code does not provide for any protection against acts of interference to ensure the application of *Article 2 of the Convention*. It recalls that it has been commenting on this since 1968. The Committee draws the Government's attention to *Article 2, paragraph 1, of the Convention*, which provides that "workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration". The Committee is of the view that legislation should make

express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference to ensure the application in practice of *Article 2 of the Convention*.

2. The Committee notes that, under section 3 of the Labour Code, domestic servants, gardeners, cooks and the like are excluded from the application of the Code. The Committee had been commenting, under the previous legislation, on the need to extend the application of the Convention to domestic servants and other workers. The Convention does not allow for the exclusion of such workers from its scope. The Committee therefore requests the Government to consider completing its present legislation by introducing legislative measures in order to extend the application of the Convention to domestic servants, gardeners, cooks and the like.

3. The Committee notes that agricultural workers are also excluded under the same provision (section 3) of the Labour Code, except those who shall be covered pursuant to a decision of the Council of Ministers. The Convention does not allow the exclusion of agricultural workers from its scope. The Committee therefore requests the Government to consider completing its present legislation by introducing legislative measures in order to extend the application of the guarantees provided by the Convention to all agricultural workers. It also asks the Government to send a copy of any decision by the Council of Ministers on the application of the Labour Code to agricultural workers.

The Committee hopes that the Government will take the appropriate measures to bring its legislation into full conformity with the Convention and asks it to indicate in its next report what measures have been taken to that effect.

The Committee is addressing a direct request to the Government on other points.

Kenya (ratification: 1964)

The Committee notes the information supplied in the Government's report.

Articles 4 and 6 of the Convention. In previous observations, the Committee had expressed the firm hope that, aside from the inquiry carried out by a tripartite committee established in 1992 to make recommendations regarding collective bargaining in the civil service, the Government would take the necessary measures to ensure that public employees (with the possible exception of those engaged in the administration of the State) benefit from the guarantees laid down in the Convention, thereby being able to negotiate collectively their terms and conditions of employment, which presupposes the recognition of their right to establish and join organizations of their own choosing. The Committee notes the Government's indication in its most recent report that, on 8 July 1995, a motion was raised in Parliament urging the Government to register the Civil Servants' Union, pursuant to which the Government directed the Registrar of Trade Unions to register the Kenya Civil Servants' Union. The Committee requests the Government to indicate in its next report the representative nature of the Civil Servant's Union, who is entitled to membership in the union and in what activities the union and its members are permitted to participate.

Given that the Convention was ratified more than 30 years ago, the Committee also urges the Government to take measures to bring its legislation into full conformity with *Articles 4 and 6 of the Convention* to ensure that public employees, with the possible exception of those engaged in the administration of the State, benefit from the guarantees laid down in the Convention. The Committee requests the Government to indicate in its next report the measures it has taken or envisages in this regard.

Lebanon (ratification: 1977)

The Committee notes the information provided by the Government in its report. The Committee recalls its previous comments on the following points:

- *The absence of specific statutory provisions on protection against all acts of anti-union discrimination and on the protection of workers' and employers' organizations against acts of interference by each other (Articles 1 and 2 of the Convention).* While noting in its previous report that workers and members of trade union committees were protected against dismissal for trade union activities (paragraphs (d) and (e) of section 50 of the Labour Code), the Committee had recalled that the protection provided for in *Article 1 of the Convention* covered not only dismissal but all other discriminatory measures both at the time of taking up employment and in the course of employment (transfers, demotions, disciplinary measures, deprivation of or limitations on wages or social benefits and other prejudicial acts). Furthermore, the Committee had requested the Government to adopt specific measures, coupled with effective and sufficiently dissuasive sanctions, to protect workers' organizations against acts of anti-union discrimination, as well as to protect workers' and employers' organizations against acts of interference by each other.
- *The requirement by virtue of sections 3 and 4 of Decree No. 17386/64 that employees' representatives must have the approval of at least 60 per cent of the Lebanese workers concerned to be able to negotiate and that a collective agreement must be approved by two-thirds of the general assembly of trade unions party to the agreement (Article 4 of the Convention).* The Committee had considered that the percentages laid down in sections 3 and 4 of Decree No. 17386/64 were not such as to encourage the full development and utilization of machinery for voluntary collective bargaining, since under such a system, if no union covered more than 60 per cent of the workers, collective bargaining rights would be denied to the workers in the undertaking. It therefore had requested the Government to ensure that the percentages for negotiating and approving collective agreements were lowered to a reasonable level or eliminated altogether, so as to give full effect to *Article 4 of the Convention*.
- *Denial of the right to collective bargaining of workers in the public sector by virtue of Decree No. 17386/64 and Decree No. 5883 of 1994 (Salaried Workers' General Regulations), in so far as they are not engaged in the administration of the State (Article 6 of the Convention).* The Committee had recalled that only public servants engaged in the administration of the State could be excluded from the scope of the Convention. It had therefore asked the Government to encourage and promote machinery for the voluntary negotiation of collective agreements between the State as employer and organizations of public servants other than those engaged in the administration of the State, as a means of settling their terms and conditions of employment. It had also asked the Government to take such steps, with regard to workers in public sector undertakings responsible for the management of public services, whose right to negotiate collectively is currently subject to compulsory arbitration under the terms of Decree No. 17386/64, as well as with regard to "salaried workers" in the public service who are currently covered by the provisions of Decree No. 5883 of 1994 and who do not enjoy the right to bargain collectively.

The Committee notes that in its report the Government mostly confines itself to repeating information it had already provided the previous year on the above points in order to deny the existence of the above violations of the Convention or, alternatively, to justify the existing legislation. The Committee nevertheless notes the Government's statement that in amending labour legislation, it will endeavour to take into consideration the Committee's comments with regard to protection against acts of interference as well as to the need to lower the percentages required in order to negotiate and approve collective agreements.

The Committee would remind the Government that the above discrepancies between national legislation and the Convention, which the Committee has commented on in detail for several years, constitute serious violations of the Convention which was ratified in 1977. The Committee notes the Government's statement that the Labour Code as well as the Law respecting collective labour agreements, mediation and arbitration (Decree No. 17386 of 3 September 1964) are currently in the process of being reviewed. The Committee therefore would once again request the Government to ensure that the necessary amendments are made to the labour legislation in the very near future so as to bring the latter into conformity with the requirements of the Convention. In preparing such amendments, the Committee would encourage the Government to take into consideration the Committee's previous detailed comments on discrepancies between national legislation and the Convention. The Committee requests the Government to keep it informed of any progress made in this regard in its next report, and reminds it that the ILO remains at its disposal for any assistance it may need in framing provisions and amendments to give effect to the Convention.

Finally, the Committee once again requests the Government to provide a copy of Legislative Decree No. 112 of 1959 (public service regulations) along with its next report.

Liberia (ratification: 1962)

The Committee notes with regret that for the seventh year in succession the Government has been unable to send a report. It must therefore repeat its previous observation which read as follows:

> The Committee notes that no measures have been taken to eliminate the discrepancies between the national legislation and the Convention.
>
> In the circumstances, the Committee can only recall its comments of the last few years which concern the following points:
>
> 1. *Article 1 of the Convention*. The provisions of the national legislation are insufficient to guarantee workers adequate protection, accompanied by sufficiently effective and dissuasive sanctions, at the time of recruitment and during the employment relationship.
>
> 2. *Article 2*. The present provisions are not sufficient to ensure adequate protection of workers' organizations, accompanied by sufficiently effective and dissuasive sanctions, against acts of interference by employers and their organizations.
>
> 3. *Articles 4 and 6*. The possibility of collective bargaining is not offered to employees of state enterprises and other authorities since these categories are excluded from the scope of the Labour Code, whereas under *Article 6 of the Convention*, only public servants engaged in the administration of the State are not covered by the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Libyan Arab Jamahiriya (ratification: 1962)

The Committee takes note of the Government's report and observes that it refers to various provisions of a general character which in the Government's view secure compliance with the Convention.

Noting that the legal provisions mentioned by the Government do not refer specifically to the questions raised by the Committee, the Committee recalls that for several years it has commented on the following matters:

Article 1 of the Convention. The Committee had noted that section 34 of Act No. 107 of 1975 concerning trade unions only provided for protection against acts of anti-union discrimination for trade union activities during the employment relationship, but not at the time of recruitment. In this respect, the Committee recalls that under the terms of *Article 1 of the Convention*, legislative measures, accompanied by sufficiently dissuasive sanctions, should be adopted which would provide for protection against acts of anti-union discrimination not only during the employment relationship but also at the time of recruitment. In these circumstances the Committee requests the Government to take measures as indicated above.

Moreover, the Committee had noted that public servants not engaged in the administration of the State, agricultural workers and seafarers, did not have adequate protection against acts of anti-union discrimination. In this respect, the Committee recalls that the Convention does not exclude from its scope any of the categories of workers mentioned above. In these circumstances, the Committee requests the Government to take appropriate measures, as soon as possible, accompanied by sufficiently dissuasive sanctions, so that workers in the sectors mentioned above enjoy adequate protection against acts of anti-union discrimination at the time of recruitment as well as during the employment relationship.

Articles 4 and 6 of the Convention. The Committee had noted that sections 63, 64, 65 and 67 of the Labour Code required the clauses of collective agreements to be in conformity with the national economic interest. In this respect, the Committee points out that legal provisions which subject the validity of collective agreements to the approval of the administrative authority for reasons of economic policy considerations in such a way that employers' and workers' organizations cannot freely determine employment conditions, are not in conformity with *Article 4 of the Convention*. In these circumstances the Committee requests the Government to take measures to repeal the above-mentioned provisions of the Labour Code.

In the same way, the Committee had observed that public servants not engaged in the administration of the State, agricultural workers and seafarers do not have the right to bargain collectively. In this respect, the Committee recalls that, under the terms of *Article 6 of the Convention*, only public servants who work in the administration of the State (civil servants in government ministries and comparable bodies) may be excluded from its scope. Consequently, the Committee once again emphasizes that public servants who do not work in the administration of the State, agricultural workers and seafarers should enjoy the right to bargain collectively. In these circumstances, the Committee requests the Government to take the appropriate measures so that these workers can freely enjoy this right.

The Committee requests the Government to inform it in its next report on any measures taken in relation to the questions raised so as to bring its legislation into full conformity with the Convention.

Malaysia (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. Further to its previous comments, the Committee notes the Government's statement that it has formally approved the proposed repeal of section 15 of the Industrial Relations Act,

which limits the scope of collective agreements for companies granted "pioneer status", and that positive measures are being taken to repeal this provision.

The Committee requests the Government to send a copy of the repealing legislation as soon as it is adopted.

2. With reference to the Committee's previous comments on the scope of section 13(3) of the Industrial Relations Act, the Government once again indicates that the matters excluded by that provision from collective bargaining and known as internal management prerogatives (i.e. promotion, transfer, employment, termination, dismissal and reinstatement), are subject to negotiation, conciliation, arbitration and judicial decisions and can be raised at any time as and when they arise, as opposed to other matters covered in collective agreements that are negotiated at specific intervals. Moreover, in the Government's view, such matters cannot be predetermined in a collective agreement, as a predetermined agreement on such matters would ultimately affect the rights of management to manage. In addition, the Government emphasizes that the internal management prerogatives do not grant unfettered rights to employers, as demonstrated by numerous decisions of the Malaysian Courts as follows: (i) an employer can refuse to promote a worker only for proper cause and the trade union that represents the worker is free under the law to raise questions as to what is and what is not proper cause; (ii) the employers' prerogative of transfer is not unlimited. The Courts had ruled that there should be no unreasonableness or want of mala fide on the part of the employer; (iii) termination by way of retrenchment could not be carried out arbitrarily. The principle of "last in, first out" had to be applied; (iv) unjust dismissal could entitle the worker to reinstatement; (v) to provide that matters such as allocation of duties be covered by collective agreement, would be tantamount to asserting that it is not the management which is responsible for managing the enterprise, which is contrary to the commonly accepted practice worldwide. The Committee notes with interest that there is a degree of judicial protection as regards these internal management prerogatives which also appear to be subject to some level of bargaining in practice. The Committee therefore requests the Government to take the necessary steps to ensure that its legislation no longer excludes those management prerogatives which are not purely internal from collective bargaining, in conformity with the Convention as well as with national practice and judicial precedents.

3. In relation to the Committee's comments on certain restrictions on the right to bargain collectively for public servants other than those engaged in the administration of the State (section 52 of the Industrial Relations Act), the Government indicates that the Congress of Unions of Employees in the Public and Civil Services (CUEPACS), the officers of the Joint Councils and the Public Services Department meet on a regular basis to discuss issues affecting employees in the public service. Through these discussions, the public sector unions do contribute to the deliberations on remunerations, terms and conditions of employment and the resolution of anomalies arising therefrom. For instance, in the current claims for salary adjustments, CUEPACS has had meetings with the Prime Minister, and through these meetings, some understanding has been arrived at. The Government emphasizes that the National Joint Councils provide a sufficient avenue for discussion and negotiation on salary and terms and conditions of employment of public servants and that CUEPACS as a national centre for public servants, plays an important and responsible role in protecting the interests of public servants, including salary negotiation.

The Committee takes note of this information and would request the Government to provide information on how collective bargaining is encouraged and promoted in practice between public employers and public servants other than those engaged in the administration of the State, for example, the number of collective agreements concluded, the different categories and numbers of employees covered, the number of public sector unions acting as bargaining agents, etc.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mauritius (ratification: 1969)

The Committee notes the Government's report.

Article 2 of the Convention. The Committee has commented in its previous observations, for a number of years, on the need to include in the national legislation an explicit provision protecting workers' organizations against any act of interference by employers. The Committee notes that the Trade Union and Labour Relations Bill, which contained provisions to this effect, had met with a strong opposition of workers' organizations. It further notes that, as a result, the Government decided to come forward with additional legislation, that it has secured the assistance of the ILO in this regard, and that full consideration will be given to bring the legislation in line with *Article 2 of the Convention.*

The Committee once more expresses the firm hope that measures will be taken to adopt specific legal provisions in the near future to guarantee effective protection against acts of interference by employers and their organizations in the activities of workers' organizations, and vice versa, accompanied by effective and sufficiently dissuasive sanctions. The Committee requests the Government to provide information in its next report on any developments in the matter.

Morocco (ratification: 1957)

The Committee notes that the Government's report has not been received. The Committee notes the debate which took place at the Conference Committee in 1997.

The Committee notes the conclusions of the Committee on Freedom of Association in Cases Nos. 1687 and 1691, both of which were examined most recently in November 1996 (see the 305th Report approved by the Governing Body at its 267th Session), in which the Committee on Freedom of Association expresses its grave concern at the gravity of the allegations of anti-union discrimination and interference in trade union activities brought before it. It notes also the conclusions of the Committee concerning Case No. 1877 (see the 307th Report approved by the Governing Body at its 269th Session, June 1997) in which serious allegations of numerous dismissals based on trade union activities were examined.

The Committee recalls that for many years it has been insisting on the following points:

— the need to strengthen the legislative provisions contained in Dahir No. 1-58-145 of 29 November 1960 with a view to guaranteeing in law and in practice adequate protection to workers against acts of anti-union discrimination, both at the time of recruitment and in the course of the employment relationship (including all measures which might prejudice workers, such as transfers, downgrading, involuntary retirement) supported by effective sanctions of a sufficiently dissuasive nature *(Article 1 of the Convention)*;

— the need to adopt specific legislative measures to protect organizations of workers against acts of interference by employers or by organizations of employers, in particular acts which are designed to promote the establishment of workers' organizations under the domination of an employer, or to support workers' organizations by financial or other means *(Article 2 of the Convention)*;

— the need to adopt appropriate measures to encourage and promote the development and utilization of machinery for voluntary negotiation of collective agreements between employers and workers' organizations with a view to the regulation of terms and conditions of employment *(Article 4 of the Convention)*.

The Committee notes that the Government representative to the Conference Committee stated that draft legislation had been prepared containing provisions on the three matters noted above, that the Government was ready to accept the technical assistance of the ILO and that a technical cooperation programme was in fact in progress with the multidisciplinary team.

Observing that neither the legislation nor the national practice are in conformity with the Convention, the Committee asks the Government to take the necessary steps to ensure significant progress is achieved in the near future, and trusts that the ILO technical assistance will be useful in meeting this objective.

The Committee hopes that the Government will make every effort to take the necessary action in the near future and requests the Government to keep it informed of progress in this regard.

Norway (ratification: 1955)

The Committee notes the Government's report and the comments of the Oljarbeidernes Fellessammenslutning (OFS) and the Norsk Journalistlag (NJ) of November 1996.

The Committee notes that the OFS and the NJ have criticized certain proposed amendments to the Labour Disputes Act drafted by the Labour Law Council which would limit the collective bargaining rights of trade unions that are not affiliated to a higher level organization.

The Committee requests the Government to indicate whether the suggestions of the Labour Law Council have resulted in a draft law and, if so, to forward to the Committee a copy of this draft.

The Committee will keep the question of compulsory arbitration under study and will examine it at its next examination of the application of the Convention.

Pakistan (ratification: 1952)

The Committee notes the information provided by the Government in its reports and the comments made by the International Confederation of Free Trade Unions Pakistan Council (ICFTU-PC).

The Committee's previous comments referred to discrepancies between national legislation and the Convention on the following points:

- Denial of free collective bargaining in the public banking and financial sectors (sections 38A to 38I of the Industrial Relations Ordinance (IRO), 1969).
- Denial of the rights guaranteed by *Articles 1* (protection against anti-union discrimination), *2* (protection against acts of interference), *and 4* (right to bargain collectively) *of the Convention* for workers in export processing zones (section 25 of the Export Processing Zones Authority Ordinance 1980).
- Lack of sufficient legislative protection for workers dismissed for their trade union membership or activities (the judgement of the Supreme Court of 11 August 1994 restricts the right to judicial recourse in case of dismissal when it is not connected with an industrial dispute thus impeding the possibility of reinstatement provided for under section 25-A of the IRO).

The Committee notes that in its report, the Government merely confines itself to repeating information it had already provided the previous year on the above points. The Committee notes however that in its subsequent report, the Government indicates that all labour laws are currently being reviewed and that in this respect, due consideration will be given to the Committee's previous observations concerning this Convention. The Government points out none the less that amending labour legislation is a time-consuming exercise involving wide-ranging consultations with the social partners.

The Committee would once again remind the Government that the above discrepancies between national legislation and the Convention, which the Committee has commented on in detail for several years, constitute serious violations of the Convention which was ratified in 1952. The Committee therefore would once again request the Government to ensure that the necessary amendments are made to the labour legislation in the very near future so as to bring the latter into conformity with the requirements of the Convention. In preparing such amendments the Committee would strongly encourage the Government to take into consideration the recommendations of the direct contacts mission which took place in January 1994, as well as those of the tripartite Task Force on Labour which drafted its report in July 1994. The Committee requests the Government to indicate the progress made on this in its next report.

Panama (ratification: 1966)

The Committee notes the report made by the Government. Similarly, it notes the observations made by the Latin American Central of Workers (CLAT) objecting to Decree No. 1, issued in January 1996, which accelerates the procedure for establishing enterprises in export processing zones and Decree No. 2, issued in February 1996, which amends Decree No. 1.

The Committee observes that the CLAT's comments concern the following provisions of Decrees Nos. 1 and 2, issued in 1996, in relation to the Convention:

- section 2 of Decree No. 2 which provides that agreements relating to working conditions shall be reached in export processing zones, in all cases where such agreements do not affect the profitability of capital and allow fair, rational and acceptable rates of return and profits to be achieved;
- sections 18, 19, 20, 21, 22, 25 and 26 of Decree No. 1, and sections 3, 4 and 5 of Decree No. 2 which provide for the establishment of a special department competent for disputes in export processing zones, in order to resolve any labour dispute which may arise, and within the above department, the setting up of a tripartite commission, which will be designed solely to reconcile the interests of employers and workers. CLAT criticizes the establishment of an unequal system for the resolution of disputes, based on a procedure extending over too long a period (35 working days) and in which, in the absence of an agreement between the parties, the dispute shall be subject to the arbitration procedure provided for in the Labour Code.

The Committee notes that in its report the Government states that, in relation to the observations made by CLAT, changes have been made to Decrees Nos. 1 and 2 relating to export processing zones by means of Decree No. 3 of 7 January 1997 which makes the following provisions:

(i) Section 9. The phrase which provided that collective agreements or Conventions may be concluded in all cases where such agreements do not affect the profitability of capital and allow fair, rational and acceptable rates of return and profits to be achieved, is repealed from section 2 of Decree No. 2.

(ii) Sections 10, 11, 12, 13, 14 and 15. These provisions amend the provisions of Decrees Nos. 1 and 2 relating to the establishment of a conciliation procedure, in the case of disputes or bargaining, before a tripartite commission; in this manner, if the parties concerned do not reach an agreement following the conciliation procedure, workers may go on strike. Similarly, the possibility of resorting to arbitration without the agreement of the organization concerned, following the procedure before the tripartite commission, is eliminated.

The Committee notes with satisfaction the changes made. Notwithstanding, it wishes to point out that in its opinion an excessively long conciliation procedure, such as that in the present case (35 working days), may be an obstacle to the provision made in *Article 4 of the Convention*. The Committee requests the Government to take the necessary measures to ensure that the conciliation periods provided for in Decree No. 3, issued in January 1997, are reduced. The Committee requests the Government to provide information in its next report on all measures adopted in this respect.

Papua New Guinea (ratification: 1976)

The Committee notes the information supplied by the Government in its report.

In its previous comments, the Committee has asked the Government to amend national legislation which gave the authorities discretionary power to cancel arbitration awards or declare wages agreements void when they were contrary to government policy or national interest (section 42 of the Industrial Relations Act and section 52 of the Public Service (Conciliation and Arbitration Act).

The Committee notes the Government's statement that the Department of Industrial Relations has already made a submission for a Certificate of Amendment to the state Solicitor's Office of the Department of the Attorney-General. Upon granting of this certificate, a policy submission to the competent authorities would be made towards repealing the above two provisions from the Acts respectively.

The Committee expresses the hope that the two provisions in question will be repealed in the very near future so as to bring national legislation into conformity with *Article 4 of the Convention*. It asks the Government to inform it of any progress made in this regard in its next report.

Paraguay (ratification: 1966)

The Committee notes the reports supplied by the Government and recalls that for several years its comments have referred to: (1) the absence of legislative provisions providing workers who are not union leaders with adequate protection against acts of anti-union discrimination in respect of their employment; and (2) the insufficient number of sanctions provided for in the Labour Code for the non-observance of the provisions relating to interference among workers' and employers' organizations and to union stability (section 385: ten to 30 days' minimum wages for each worker affected by the non-observance of the provisions of the Code and section 393: 30 times the minimum wage for each worker affected by the failure of an employer to provide guarantees of union stability).

The Committee regrets to observe that the Government limits itself to pointing out that thus far no changes have been made to the Labour Code in relation to the questions raised. The Committee recalls that under the provisions of *Article 1 of the Convention* adequate protection against acts of anti-union discrimination must be guaranteed for workers, at the time of taking up employment and during the course of employment, with such protection extending to all measures of a discriminatory nature (dismissals, transfers, downgrading and any other measures prejudicial to workers); it also recalls that the effectiveness of the legislative provisions depends, to a large extent, on whether such measures are accompanied by sanctions which are sufficiently dissuasive as to ensure their application.

The Committee once again urges the Government to take the measures necessary for bringing the legislation into full conformity with the provisions of the Convention and requests the Government to provide, in its next report, information on the measures adopted in this respect.

Peru (ratification: 1960)

The Committee notes the information supplied by the Government in its report, as well as the observations of the Federation of Workers in the Lighting and Power Industry of Peru in relation to the application of the Convention.

The Committee recalls that its previous comments related to:

- the absence of effective and sufficiently dissuasive sanctions to guarantee the protection of workers against acts of anti-union discrimination and to protect workers' organizations against acts of interference by employers *(Articles 1 and 2 of the Convention)*;
- the obstacles to voluntary negotiation resulting from the requirements of a majority, not only of the number of workers, but also of enterprises, in order to conclude a collective agreement for a branch of activity or occupation (section 46 of the Industrial Relations Act of 1992) *(Article 4)*;
- the obligation to renegotiate collective agreements which are currently in force (fourth transitional and final section, and section 43(d) of the Act and section 30 of its Regulations) *(Article 4)*;
- the possibility for the employer of having recourse to the Ministry of Labour without the agreement of the workers for the purposes of modifying, suspending or substituting conditions of work previously agreed upon (sections 1 and 2 of Legislative Decree No. 25921 of 3 December 1992) *(Article 4)*.

With reference to the absence of effective and dissuasive sanctions, the Committee notes with interest that the Single Text of the Act on Productivity and Labour Competition, section 29(a) and (b), contains provisions relating to the annulment of the dismissal when it takes place on the grounds of trade union membership or participation in trade union activities, or of being a workers' representative, or acting or having acted in that capacity. The Committee also notes with interest that section 168 of the Penal Code *prohibits forcing another person*, by violence or threats, *to join or not to join a trade union* and lays down penal sanctions for violation of this provision. In regard to other acts of anti-union discrimination against a worker, such as at the time of recruitment, in the event of prejudicial acts other than dismissal, or for acts of interference by employers in the affairs of trade union organizations, the Committee notes that legislation does not provide any protection whatsoever. The Committee requests the Government to take measures to extend existing protection to such cases.

Furthermore, taking into consideration the numerous complaints examined by the Committee on Freedom of Association in regard to anti-union acts and dismissals, for which the legal procedures are slow and legal decisions to reinstate persons have in some cases not been complied with by the employers, the Committee wishes to remind the Government that "the existence of general legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice" (see General Survey on freedom of association and collective bargaining, 1994, paragraph 214). The Committee requests the Government to take measures so that existing procedures for remedy proceed rapidly.

With regard to the requirement of a majority to conclude a collective agreement for a branch of activity or occupation, the Committee notes the Government's comments regarding the grounds on which legislation lays down this requirement and that they are fundamentally identical to information given in its previous report. On this question, the Committee insists that the requirement for a majority of not only the number of workers but also of enterprises in order to conclude a collective agreement for a branch of activity or occupation, stipulated in section 46 of the Industrial Relations Act of 1992, raises problems of compatibility with the Convention. In this respect, the Committee stresses that the level at which collective bargaining is carried out must depend essentially on the decision of the parties.

With regard to the provisions concerning the obligation to renegotiate collective agreements which are currently in force, stipulated in the fourth transitional and final section, and section 43(d) of the Industrial Relations Act of 1992 and section 30 of its Regulations, the Committee takes due note that these provisions are no longer applicable since virtually all the collective agreements have been revised with the agreement of the social partners, and have been harmonized with the legislation in force.

With reference to the employer's possibility of having recourse to the Ministry of Labour without the agreement of the workers for the purposes of modifying, suspending or substituting conditions of work previously agreed upon (sections 1 and 2 of Legislative Decree No. 25921 of 3 December 1992), the Committee notes that according to the information provided by the Government these provisions were repealed by Act No. 26513 of 28 July 1995. Nevertheless, the Committee observes that section 42 of the Employment Stimulation Act allows the employer to introduce changes or to modify working shifts, days and hours, as well as the form and methods of providing the work. In this respect, the Committee emphasizes that a legal provision which allows the employer unilaterally to modify the content of previously concluded collective agreements or forces them to be renegotiated, is contrary to the principles of collective bargaining.

The Committee requests the Government once again to take measures, in consultation with the social partners, to amend the legislation to bring it fully into conformity with the Convention.

The Committee requests the Government to inform it in its next report of the measures adopted in relation to the questions raised.

Poland (ratification: 1957)

The Committee notes the Government's report.

With reference to its previous comments on the effective and dissuasive nature of measures to be taken to ensure adequate protection against acts of anti-union discrimination both at the time of taking up employment and in the course of employment, and against acts of interference by employers in workers' trade union activities, the Committee observes that the Government has indicated that the present fixed-amount fines (section 35 of the Act of 23 May 1991, which established a maximum fine of 50,000 zlotys) still remained in force. The Committee recalls that to ensure the practical application of *Articles 1 and 2 of the Convention*, national legislation must establish sufficiently dissuasive sanctions against acts of anti-union discrimination and acts of interference by employers in workers' trade union activities. In these circumstances, the

Committee requests the Government to take measures in the near future to bring its legislation into conformity with the requirements of the Convention.

Concerning its previous comments on the refusal to approve collective agreements (section 241 of Chapter XI of the Labour Code), the Committee takes due note that the Government has indicated in its report that some refusals took place by reasons of procedural infringements but not for restrictive reasons.

With regard to the Committee's previous comments concerning section 241 of the Labour Code providing that an enterprise collective agreement may be concluded for workers, with the exception of workers employed in the state budgetary sphere, the Government has indicated that in the light of section 241 of the Labour Code, an establishment collective agreement could not be concluded by employees of the budgetary sphere, who were employees of units for which resources available for wages were being determined on the basis of the Act of 23 December 1994 which controls the allocation of resources for wages in the state budgetary sphere. Moreover, the Government states that on the basis of this Act, the resources for wages not only of civil servants but also for other employees' groups (for example, medical practitioners employed in state public health protection institutions) were determined. Employers were, therefore, deprived in these spheres, of the right to determine the amount of financial resources, including means for wages. However, the Government indicates that the Labour Code provisions allow the employees of the state budgetary sphere to conclude supra-establishment collective agreements (section 241). The Committee takes note of the Government's information and requests it to provide detailed information concerning the scope, content and implementation of supra-establishment collective agreements concluded during the period covered by the report.

Portugal (ratification: 1964)

The Committee notes the Government's report and the comments of the General Confederation of Portuguese Workers (CGTP) on the application of the Convention.

1. The Committee notes the CGTP's statement without additional explanation that Act No. 21/96 which establishes a reduction of normal working periods of over 40 hours. The Committee notes the Government's response that in 1990 and 1996 agreements were concluded with the employers' confederations and one confederation of workers — the CGTP declined to participate — which recommended that collective agreements should gradually reduce working time to 40 hours a week, and that those agreements are binding under the Act. The Committee considers that a provision of a law, establishing that normal working hours may not exceed 40 a week is not inconsistent with the Convention, in that it implies an improvement in working conditions and does not prevent the parties from negotiating and establishing a shorter working day in collective agreements.

2. The CGTP also objects to compulsory arbitration being imposed by law. The Committee notes that under section 35 of Decree No. 209/92 any of the parties to collective negotiations or the administrative authority or (in the case of public enterprises) the Economic and Social Council may refer disputes arising from the negotiation of a collective agreement to compulsory arbitration, particularly where agreement is not reached within two months. In the Committee's view, legislation which allows one of the parties to a dispute, or the authorities, unilaterally to impose intervention by the administrative authority for the purpose of compulsory arbitration is inconsistent with the promotion of collective bargaining. In these circumstances, the Committee asks the Government to bring its legislation into full conformity with the Convention by taking

steps to have the above Decree amended to establish that any compulsory arbitration must be at the joint request of the parties.

Romania (ratification: 1957)

The Committee has noted the Government's report, the new Law on Collective Employment Contracts of 1996, the communication from the National Union Block dated 14 October 1996 and the conclusions of the Committee on Freedom of Association in Case No. 1904, adopted by the Governing Body at its 268th Session in March 1997.

The Committee notes with satisfaction that certain restrictions on the right of employers to bargain collectively, on which it had commented, have been lifted under the above Law. In specific terms, the right to bargain collectively is no longer restricted to chambers of commerce and industry.

The Committee had asked the Government to indicate the measures taken or envisaged, together with effective and sufficiently dissuasive sanctions, to ensure appropriate protection for all workers against acts of anti-union discrimination intended to make a worker's employment conditional on his not joining a trade union, dismiss a worker or cause harm to him as a result of his union membership.

The Committee also asked the Government to indicate in detail the measures, together with effective and sufficiently dissuasive sanctions, taken or envisaged to guarantee to workers' organizations appropriate protection against acts of interference by employers, in particular those giving rise to the establishment of workers' organizations supported by financial or other means so as to place such workers' organizations under the supervision of an employer or an employers' organization.

In this regard, the Committee notes that the Government indicates in its report that the Individual Employment Contracts Bill provides for the prohibition of discrimination based on union membership. Amendments to the 1991 Trade Unions Act will be discussed, together with the proposals made by the social partners, within the tripartite consultative committee set up under the Ministry of Labour and Social Security.

The Committee requests the Government to provide information on the progress made, and to provide details, and hopes that it will also be able to provide a copy of the Bill or the provisions prohibiting anti-union discrimination and interference and providing for effective sanctions.

Rwanda (ratification: 1988)

The Committee notes the Government's report.

1. *Article 1 of the Convention.* The Committee had drawn the Government's attention to the need to take measures to ensure that all workers, including agricultural workers, and not only trade union delegates, enjoy adequate protection against acts of anti-union discrimination both at the time of taking up employment and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions in accordance with the requirements of the Convention. In its report, the Government indicates that agricultural workers will be included in the scope as soon as the draft Labour Code is adopted. The Committee requests the Government to supply information on progress in the adoption of the Labour Code and to supply the final text once it has been adopted.

2. *Article 4.* The Committee requested the Government to supply information on how the provision on collective bargaining is applied in practice, including the number of collective agreements concluded, the categories of workers covered, etc. It notes that, according to the Government's report, until now no collective agreement has been

concluded in the country. The Committee therefore wishes to emphasize one of the essential components of *Article 4 of the Convention*, namely the obligation to take measures to *promote collective bargaining*. It requests the Government to indicate in its next report how it intends to promote collective bargaining on conditions of employment in the country.

Saint Lucia (ratification: 1980)

The Committee notes with regret that for the seventh year in succession the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next meeting and that it will contain full information on the matters raised in its previous observation which read as follows:

> In its previous comments, the Committee recalled the importance of sufficiently effective and dissuasive measures to ensure the application in practice of basic legal standards prohibiting acts of anti-union discrimination.
>
> It recalls that section 3(2) of the Labour Regulations of 1960 (No. 15) provides that it is the duty of the Labour Commissioner to ensure that workers enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
>
> The Government is requested to indicate, in its next report, the manner in which section 3(2) is applied in practice, including any statistics concerning the number of complaints of anti-union discrimination brought to the attention of the labour commissioner and whether any sanctions have been applied in such cases or compensation ordered for the worker who has suffered such acts of discrimination.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sierra Leone (ratification: 1961)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Articles 1 and 2 of the Convention. Need to adopt specific provisions accompanied by sufficiently effective and dissuasive sanctions for the protection of workers and workers' organizations.* The Committee had previously noted that the revision of the labour laws, prepared with ILO technical assistance, had already been submitted to tripartite meetings, that the comments of the tripartite body have been received and that the document has just been forwarded to the Law Officers' Department. The Committee asks the Government to keep it informed of any further progress made in the preparation of the final draft document and to provide a copy of the revised legislation as soon as it has been adopted.
>
> *Article 4.* With regard to the right to collective bargaining of teachers, the Committee would request the Government to provide information in its future reports on any collective agreements covering teachers that have been concluded.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Singapore (ratification: 1965)

The Committee notes the information supplied by the Government in its report.

1. In its previous comments, the Committee had referred to the prohibition in section 17(2) of the Industrial Relations Act (IRA) of negotiations relative to promotion, transfer, appointment, dismissal and assignment of duties. The Government states that the exclusion of the above functions from collective bargaining is necessary to enable management to have greater flexibility in deploying and managing its manpower resources

in order to achieve its corporate objectives in the most efficient manner. The Committee considers that while issues such as promotion, appointment and assignment of duties could eventually be considered as a matter for the employer to decide on as part of his freedom to manage the enterprise, the other issues, namely transfer and dismissal that are currently excluded from negotiation by virtue of section 17(2) of the IRA, should not be excluded from the scope of collective bargaining. The Committee therefore requests the Government to indicate, in its next report, the steps taken or envisaged to bring this provision into conformity with *Article 4 of the Convention*.

2. With regard to the discretion of the Industrial Arbitration Court to refuse to register collective agreements concluded in newly established enterprises (section 25 of the IRA), the Committee notes the Government's statement that the Industrial Arbitration Court has so far not refused to certify any of the collective agreements in the new enterprises with terms and conditions of service more favourable than those provided for in Part IV of the Employment Act. The Government states, moreover, that it will be reviewing this provision in consultation with the two other social partners. The Committee trusts that the Government will take appropriate steps to ensure that section 25(2) of the IRA is amended in line with the Convention's requirements so as to fully recognize the right to bargain collectively in newly established enterprises. It requests the Government to inform it of any developments in this respect in its next report.

Sri Lanka (ratification: 1972)

The Committee notes the information provided by the Government in its report.

1. Further to its previous comments on the need to adopt legislative provisions in order to ensure full conformity with the requirements of *Articles 1 and 2 of the Convention*, the Committee notes the Government's statement that the final draft of the amendments to the Industrial Disputes Act has been prepared in this respect. This draft will be submitted to Parliament on Cabinet approval. The Committee trusts that these amendments to the Industrial Disputes Act will ensure the full protection of workers against acts of anti-union discrimination and of workers' organizations against acts of interference by employers accompanied by effective and sufficiently dissuasive sanctions, in accordance with the requirements of the Convention. It requests the Government to supply a copy of these amendments as soon as they are adopted.

2. With reference to previous observations from workers' organizations in relation to collective bargaining in the plantation sector *(Article 4)*, the Committee notes the information provided by the Government to the effect that two collective agreements have been concluded in the plantation sector for the period ending 30 July 1995. The Committee further notes that 27 collective agreements have been concluded in other sectors during the same period. The Committee also notes that the Lanka Jathika Estate Workers' Union has stated in a communication dated 3 November 1997 that a draft collective agreement in the plantation sector is being discussed. The Committee would ask the Government to provide information in its next report on any progress made in collective bargaining in the plantation sector and to provide the texts of any new collective agreements which may be concluded in this sector during the relevant reporting period.

3. Further to its previous comments, the Committee would moreover ask the Government to provide information on any progress made in collective bargaining in the free trade zones and in several other industrial establishments within the purview of the Greater Colombo Economic Commission (renamed the Board of Investments).

Sudan (ratification: 1957)

The Committee takes note of the Government's report.

Article 1 of the Convention. The need to guarantee workers protection against acts of anti-union discrimination. The Committee notes that a new complaint from the Sudan Workers' Trade Unions' Federation alleging measures of anti-union reprisals, including new cases of detentions of trade unionists and acts of violence against them, has been examined by the Committee on Freedom of Association in March 1997 (see 306th Report, Case No. 1843).

The Committee had requested the Government to take steps to ensure that: (i) section 23 of the Trade Union Act of 1992 was amended so that all trade unionists, and not just officials, were protected against acts of anti-union discrimination; and (ii) this protection was not weakened by allowing an employer to carry out such acts with the agreement of the Registrar or a union which was not independent.

The Committee notes that according to the Government's report, the Committee's comments have been transmitted to the tripartite committee responsible for reviewing this Act. It expresses the firm hope that the Government will take the necessary measures as soon as possible to guarantee the protection of workers against acts of anti-union discrimination both in law and in practice by amending sections 23 and 24 of the Trade Union Act of 1992.

Article 4. The Committee recalls the importance that it attaches to the principles of voluntary negotiation contained in this Article and requests the Government to take measures so that section 16 of the Industrial Relations Act of 1976 is amended to limit the powers of the Minister to refer a collective dispute to compulsory arbitration to cases of disputes in the essential services in the strict sense of the term, namely those the interruption of which would endanger the life, personal safety and health of the whole or part of the population.

The Committee notes that its comments have been transmitted to the tripartite committee responsible for reviewing the legislation. It requests the Government to indicate any progress that has been made in these matters in its next report, and hopes that the review of its legislation will help in solving the problems raised by the Industrial Relations Act of 1976 which have been the subject of the Committee's previous comments.

Swaziland (ratification: 1978)

The Committee notes the information provided in the Government's report, in particular regarding the enactment of the Industrial Relations Act, 1996 (Act No. 1 of 1996).

Scope of application. The Committee notes that arising from the definition of an "employee" in section 2, the provisions of the Industrial Relations Act in Part IV regarding collective bargaining and Part IX regarding freedom of association and the right to organize, do not protect casual employees. The Committee requests the Government to indicate whether and to what extent casual workers can be represented by a trade union taking part in collective bargaining.

Article 2 of the Convention. Whilst noting the Government's indication in its report that section 82 of the Industrial Relations Act ensures that workers are protected against interference by *public officers*, the Committee regrets that the new Act has not given effect to the comments it made in its previous observations concerning this issue. The Committee, therefore, recalls the need to adopt a specific provision accompanied by sufficiently effective and dissuasive sanctions for the protection of workers' organizations against acts of interference by employers or their organizations.

Article 4 of the Convention. The Committee notes with interest that the power to refuse to register a collective agreement on the grounds that it is inconsistent with government directives on wages and wage levels, which was the subject of previous observations, has not been maintained in the Industrial Relations Act.

Regarding the levels of bargaining, pursuant to section 40 of the Industrial Relations Act, federations do not seem to be able to take part in collective bargaining. The Committee recalls that the right to bargain collectively should also be recognized with respect to federations and confederations (see 1994 General Survey, op. cit., paragraph 249). In addition, it appears that pursuant to section 45(4) bargaining at the industry level cannot take place unless the Commissioner of Labour considers the establishment of a Joint Industrial Council to be "desirable or practicable". The Committee points out that, since the Convention contemplates *voluntary* collective bargaining, the choice of the bargaining level should normally be made by the partners themselves.

Noting that the Industrial Relations Act provides for exclusive recognition rights of a union representing more than 50 per cent of employees in a unit, and provides for recognition at the discretion of the employer where 50 per cent or less are represented, the Committee stresses the importance of promoting further the rights of minority unions where no union or group of unions has majority support, to enable them to negotiate an agreement at least on behalf of their own members.

The Committee notes that section 42 limits the ability of an organization or federation to devote more than a certain amount of time and funds to issues of public policy or public administration, one of the possible penalties for which is the suspension of exclusive bargaining rights. The Committee refers to its comments on this issue in its 1996 observation on Convention No. 87.

The Committee requests the Government to take the measures necessary to amend the Industrial Relations Act so as to bring it into full conformity with the provisions of the Convention, and points out that ILO technical assistance is available in this regard.

Sweden (ratification: 1950)

The Committee notes the information supplied by the Government in its report.

Referring to its previous comments, the Committee takes due note of the Government's statement confirming that the amendment of the health insurance compensation rate does not mean that the parties are forbidden to conclude agreements on full compensation, and is not to be interpreted in this way.

Syrian Arab Republic (ratification: 1957)

The Committee notes the Government's report. The Committee had already pointed out that section 98 of the Syrian Labour Code of 1959 permitted refusal to approve a collective agreement or cancellation of any clause likely to harm the economic interests of the country. The Government indicates that the repeal of the provision in question is planned and has communicated the text of a draft amendment to certain provisions of the Labour Code. Section 1 of this draft contemplates the repeal of section 98 mentioned above.

The Committee requests the Government to supply the final text once it is adopted.

United Republic of Tanzania (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee recalls that for several years it has been indicating to the Government that the provisions of sections 22(e)(i), (v), (vii) and (ix), 23(3)(c) and 39(7)(c) of the Permanent Labour Tribunal Act, No. 41 of 1967, as amended in 1990 and 1993, give the court the power to refuse to register a collective agreement if the Convention is not in conformity with the Government's economic policy. The Committee considers that these provisions are not compatible with the principles of *voluntary* negotiation of collective agreements between employers and employers' organizations on the one hand and workers' organizations on the other hand with a view to regulating conditions of employment by this means.
>
> The Committee observes that in its last report the Government explains that registration of collective agreements is intended to give them compulsory force. It admits that registration has sometimes been refused but adds that *that has not prevented the parties from executing their agreement*. The Government states that registration is intended to ensure that the provisions of the agreement do not contradict the provisions of the Industrial Court Act or other legislation and that it so happens that parties to the refused agreement decide to amend it so as to ensure no contradiction in its execution. According to the Government, the Industrial Court's role is advisory. It emphasizes, however, that the parties may opt to execute an agreement without registering it and this has no consequences for the agreement.
>
> The Committee notes with interest that, according to the Government, the parties may apply the agreement even though it has not been registered. It recalls, however, as a general rule, that the provisions requiring prior approval of a collective agreement for it to enter into force are only compatible with the Convention provided they merely stipulate that approval may be refused if the collective agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. On the other hand, if legislation allows the authorities full discretion to deny approval or stipulates that approval must be based on criteria such as compatibility with the general or economic policy of the Government or official directives on wages and conditions of employment, it in fact makes the entry into force of the collective agreement subject to prior approval, which is a violation of the principle of autonomy of the parties.
>
> The Committee requests the Government to indicate in its next report all the measures taken or envisaged to take into account the clarification mentioned above and to bring the legislation into conformity with the practice it affirms in its report. Furthermore, it also asks it to specify how many unregistered collective agreements have actually been applied between the parties during the period covered by the report.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Trinidad and Tobago (ratification: 1964)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. With regard to the need to amend provisions that afford a privileged position to registered associations, without providing objective and pre-established criteria for determining the most representative association (sections 24(3) of the Civil Service Act, 28 of the Fire Service Act and 26 of the Prison Service Act), the Government indicates in its report that the work of the tripartite committee which was appointed to review all the Service Acts and their relevant regulations is still continuing and that no Bill has yet been promulgated. The Committee points out that the procedure for recognizing unions as exclusive bargaining agents should provide for specific safeguards and requests the Government to indicate in its next report the outcome of the work of the tripartite committee and to provide

information on the measures taken in order to bring its legislation into conformity with the Convention (see paragraph 240 of the 1994 General Survey on freedom of association and collective bargaining).

2. With regard to the necessity to amend section 34 of the Industrial Relations Act, chap. 88:01, in order to allow a union whose members constitute the largest number of workers in a bargaining unit even if it is unable to reach a membership of 50 per cent of the workers in that bargaining unit, to negotiate collectively employment conditions, and to give to minority unions the right to pursue individual grievances at least on behalf of their members, the Committee notes from the information provided by the Government in its report that a tripartite committee was appointed to review the Industrial Relations Act and that its deliberations are still continuing. The Committee requests the Government to provide in its next report information on the outcome of the work of the tripartite committee and on measures taken to bring the legislation into conformity with the requirements of *Article 4 of the Convention*.

3. With regard to the need to establish an appropriate mechanism to deal with the grievances of the Central Bank's employees, the Committee notes from the Government's report that the Central Bank Act, chap. 79:02 has been amended by Act No. 23 of 1994 which entered into force on 1 December 1994. Section 20 of the Central Bank Act was amended so as to establish a mechanism of settlement of disputes between the Central Bank and its employees. The Committee understands that, pursuant to paragraphs (e) and (f) of the said section, the Minister of Labour has the power to refer disputes to a special tribunal whose decision is final. The Committee finds it difficult to reconcile such intervention with the principle of the voluntary nature of negotiation recognized by *Article 4* and is of the opinion that whatever mechanism of settlement of disputes is adopted, its objective should be to encourage free and voluntary collective bargaining, so it should incorporate the possibility of suspending compulsory arbitration if the parties want to resume negotiations. The Committee therefore requests the Government to consider taking the necessary measures to bring its legislation into conformity with the Convention and to keep it informed in its next report on the application in practice of such mechanism of settlement of disputes.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Turkey (ratification: 1952)

The Committee notes that the Government's report has not been received. It notes the Government's observations, dated January 1997, on the communication of the Confederation of Turkish Trade Unions (TÜRK-IŞ) of June 1996.

The Committee observes that TÜRK-IŞ, in its observation, refers to repeated comments by the Conference Committee on the Application of Standards, by the Committee on Freedom of Association and by the Committee of Experts. The main points raised are in relation to persistent divergencies in law and practice.

The Committee notes that the Government in its comments states that Bills prepared to bring the legislation into conformity with the ratified Conventions had been returned to the Ministry of Labour for review and revision; they will be submitted to the social partners for consideration before being reintroduced. The Committee also notes that, during the discussion on Convention No. 87, the Government representative at the Conference Committee in June 1997 mentioned various Bills and amendments currently under examination, especially as regards the right of public servants to negotiate collectively.

1. *Articles 1 and 3 of the Convention*. The Committee in its previous observations had noted the comments by TÜRK-IŞ on the insufficient protection against acts of anti-union discrimination. It notes that, in its more recent observations, TÜRK-IŞ states that,

under Trade Union Act No. 2821, in case of discrimination at the time of recruitment the legal fine is too low and the burden of proof rests with the worker. There is no effective protection against dismissal, legal compensation (one year of wages) being very rarely granted and reinstatement being impossible under current legislation — except for shop stewards. As for trade union officials — except shop stewards, they are not adequately protected against transfers or dismissals. The Committee once more urges the Government to take the necessary measures in the near future to amend its legislation to ensure effective protection of workers against all acts of anti-union discrimination (including dismissal) in accordance with the Convention. The Committee requests the Government to give full and detailed information in its next report on the measures taken and the progress made.

2. *Article 4*. The Committee notes that TÜRK-IŞ mentioned in its observations a number of limitations on collective bargaining (confederations are barred from collective bargaining, industry-wide bargaining is not admitted, only one collective agreement is allowed at a given level, ceilings are imposed on various indemnities, there is a 60-day time-limit for bargaining, etc.). In its previous comments, the Committee had also noted the Government's intention to change the existing dual criteria of representativity currently provided for in legislation.

The Committee asks the Government to give detailed information in its next report on the measures taken to set aside the limitations and to encourage and promote voluntary collective negotiations in accordance with *Article 4*.

3. As concerns the denial of collective bargaining rights of public servants, the Committee notes that a Bill had been prepared which granted public servants the right to organize their unions and negotiate collectively with the administration as regards their salaries and working conditions and that the Bill had been submitted after consultation with the social partners to the Council of Ministers in May 1997. The Committee once more expresses the firm hope that the legislation will be enacted in the near future under the national constitutional provision (article 53, as amended) which lays down the right of public servants to establish associations and to bargain collectively and stipulates that this right is to be regulated by law.

It asks the Government to communicate in its next report precise information on any progress in the matter and to send a copy of the Bill as soon as it is adopted.

The Committee also asks the Government to send precise information on the right of association and particularly of collective bargaining of public employees who are not civil servants and contract personnel in public economic enterprises and other employees of public bodies.

4. The Committee had, in its previous observations, commented on compulsory arbitration. The Committee is addressing this point under Convention No. 87.

The Committee notes that, in order to further trade, Act No. 3218 of June 1985 on Free Trade Zones provides that, if negotiations failed, the dispute was to be referred to compulsory arbitration for a period of ten years from the inception of the free trade zone. The Committee asks the Government to give full information on the right to collective bargaining in the export processing zones.

The Committee requests the Government to give full and detailed information in its next report on the points raised above. It also once more asks the Government to consider availing itself of the assistance of the Office to remove the obstacles which prevent the Convention from being fully applied.

[The Government is asked to report in detail in 1998.]

United Kingdom (ratification: 1950)

The Committee notes the Government's report, as well as the communications from the Career Teachers' Organization (NASWUT) (November 1996), and from the Trades Union Congress (TUC) (November 1996 and 1997). It has also noted the conclusions of the Committee on Freedom of Association in Case No. 1852 (304th Report of the Committee, approved by the Governing Body at its 266th Session, June 1996). Finally, it notes the discussion at the Conference Committee in June 1996.

The Committee recalls that it had asked the Government to review and amend its legislation, particularly sections 13 and 146(1)(a) of the Trade Union Reform and Employment Rights Act (1993), so as to bring it in line with the principles of the Convention, especially with *Articles 1 and 4 of the Convention.*

It also had commented on the Schoolteachers' Pay Review Body, hoping that its functioning would not hamper free collective bargaining.

It had finally commented on some aspects concerning denial of employment on grounds of trade union membership or activity and dismissals in connection with industrial action, in relation with purported blacklistings and other situations as well, following observations by the TUC.

The Committee notes the Government's statement that it is in the process of examining the issues raised very carefully and that it intends to consult workers' and employers' organizations on employment law issues and on the issues raised in the Committee's observation and that following this review, it will provide a full and detailed response on all the issues in its next report.

The Committee hopes that the intended consultations will be held in the near future and that they will allow for a comprehensive review of the situation and asks the Government to give full details in its next report on the various matters raised in its comments as well as in the TUC's and NASWUT's observations, in the conclusions of the Committee on Freedom of Association and in the discussions at the Conference Committee.

Venezuela (ratification: 1968)

The Committee notes the report supplied by the Government.

The Committee recalls that its previous comments referred to (1) the strengthening of the penalties applicable in cases of anti-union discrimination and interference so that they are sufficiently effective and dissuasive (sections 637 and 639 of the fundamental Labour Act which limits fines to two minimum wages); and (2) certain restrictions on collective bargaining under section 473, paragraph 2, of the fundamental Labour Act, which provides that in order to negotiate a collective agreement, the trade union in question must represent an absolute majority of the workers in an enterprise, and section 507 of the same law which does not envisage the possibility that, in the absence of trade union organizations, workers' representatives may negotiate with employers.

With reference to the sanctions applicable in cases of anti-union discrimination, the Committee notes that the Government recognizes that in fact the fines established in sections 637 and 639 of the fundamental Labour Act do not represent a penalty which employers are likely to fear. In practice it states that no employers have committed the offences established in these sections. The Committee would ask the Government to monitor this carefully in the future. In this respect, the Committee requests the Government to take measures to guarantee that the sanctions applicable in cases of anti-union discrimination and interference (sections 637 and 639 of the fundamental Labour

Act), are not merely symbolic but are sufficiently dissuasive and effective. The Committee recalls that legal standards are inadequate if they are not coupled with effective and expeditious procedures and with sufficiently dissuasive sanctions to ensure their application (see 1994 General Survey, op. cit., paragraph 224). The Committee requests the Government to provide information, in its next report, on all measures adopted in this respect.

With reference to the need, in all cases, for a trade union to represent the absolute majority of workers in an enterprise for the purposes of negotiating a collective agreement (section 473, paragraph 2 of the fundamental Labour Act), the Committee reminds the Government that this provision does not promote collective bargaining as it is defined in *Article 4* and requests the Government to take measures to amend the provision in question so that in those cases where no union organization represents an absolute majority of workers, minority organizations may jointly negotiate a collective agreement applicable to the enterprise or negotiating unit, or at least conclude a collective agreement on behalf of their members. The Committee requests the Government to inform it, in its next report, of any measures adopted in this respect.

As regards the fact that the fundamental Labour Act does not envisage the possibility that, in the absence of trade union organizations, workers' representatives may negotiate with employers (section 507), the Committee notes that the Government explains that in accordance with legislation collective bargaining must be conducted through a trade union.

Yemen (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes with regret that, despite the assurances given by the Government in previous reports and to the Conference Committee in June 1993 that it was undertaking a revision of the national legislation with a view to bringing it into conformity with the requirements of the Convention, the Government confines itself to repeating the information provided previously that the draft texts of the new Labour Code and a Bill respecting trade unions contain provisions to give effect to the Convention.
>
> In these circumstances, the Committee is bound yet again to recall that its comments have dealt with the following points:
>
> (a) the need to adopt specific and appropriate provisions, accompanied by effective and sufficiently dissuasive sanctions, to guarantee explicitly the protection of workers against any act of anti-union discrimination by employers, both at the time of recruitment and during employment, and the protection of workers' organizations against acts of interference by employers, contrary to *Articles 1 and 2 of the Convention*;
>
> (b) the need to adopt appropriate measures to encourage and promote the full development and utilization of machinery for the voluntary negotiation of collective agreements; and
>
> (c) the need to amend the provisions governing the compulsory registration of collective agreements and the possibility of their cancellation in the event that they do not conform with the security and/or economic interests of the country (sections 68, 69 and 71 of the Labour Code of 1970).
>
> The Committee firmly hopes that the Government will make every effort to ensure that the new Labour Code, the draft text of which was prepared with the technical assistance of the ILO, as well as the new Bill respecting trade unions, will be adopted in the very near future, so that its legislation can be brought into conformity with the requirements of the Convention. It recalls that the technical assistance of the ILO is at its disposal and requests the Government to *indicate clearly* in its next report at what stage of adoption the two above-

mentioned draft texts find themselves to be (i.e. awaiting parliamentary debate or approval, or alternatively approval from the Executive or promulgation by the President).

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Azerbaijan, Barbados, Burkina Faso, Colombia, Comoros, Ethiopia, Estonia, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, Japan, Jordan, Kyrgyzstan, Latvia, Lesotho, Namibia, Netherlands, Nicaragua, Philippines, Sao Tome and Principe, Tajikistan.*

Information supplied by *Algeria, Belarus, Benin, Bulgaria, Croatia, Guatemala, Guyana, Lithuania, Mongolia, Singapore* and *Slovenia* in answer to a direct request has been noted by the Committee.

Convention No. 99: Minimum Wage Fixing Machinery (Agriculture), 1951

Morocco (ratification: 1960)

The Committee noted that the Government's report has not been received. It must therefore repeat its previous observation concerning the following points:

> The Committee noted the Government's report in 1992 and the discussion that took place on the application of Convention No. 26 at the Conference Committee during the same year.
>
> *Article 2 of the Convention.* The Committee refers to the comments made by the Democratic Confederation of Labour and the General Union of Moroccan Workers to the effect that supervision by the inspectorate of the payment of wages is weak and, as a result, the authorization of partial payment of wages in kind is leading to non-observance of the provisions on minimum wages. In this connection, the Government indicates that allowances in kind paid to agricultural workers are in addition to the minimum wage fixed by decree which must be paid in cash and are not taken into consideration in assessing the minimum wage. The Committee takes note of this information. It also notes that section 39 of the Dahir to promulgate Act No. 1-72-219 of 24 April 1973 requires the provisions on legal minimum wages to be observed, that section 42 provides that the prices of goods produced by the undertaking and supplied to the workers shall be arranged by agreement and that section 2 of Decree No. 2-89-247 of 28 April 1989, which is the most recent Decree on minimum wage adjustments in agriculture available at the Office fixes the amount of the part of the daily wage which must be paid in cash in agricultural jobs.
>
> The Committee asks the Government to provide information on the application in practice of the above provisions indicating, for example, the violations recorded and sanctions imposed, and to provide copies of Decrees Nos. 2-50-345 of 15.05.1950, 2-91-33 of 23.01.1991, 2-92-316 of 04.05.1992 and of any text which has been adopted to increase minimum wages.
>
> *Article 3, paragraph 3.* With regard to the matter of consultation of workers' organizations on minimum wage fixing, the Government indicates that the provisions of the laws and regulations that govern the fixing of the rate of increase of minimum wages in commerce, industry and the liberal professions also apply to the agricultural sector. The Committee takes note of this information and refers the Government to its comments on the application of *Article 3, paragraph 2(1) and (2), of Convention No. 26.* It also asks the

Government to indicate whether the agricultural workers' unions are among the organizations consulted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

New Zealand (ratification: 1952)

See under Convention No. 26.

Turkey (ratification: 1970)

The Committee notes the information supplied by the Government and the observation made by the Confederation of Turkish Trade Unions (TÜRK-IŞ) concerning lack of information, supervision and sanctions with regard to the enforcement of minimum wage provisions in the agricultural and forestry sector. It notes that the report does not contain the Government's comments in response to this observation.

Article 1 of the Convention. The Committee noted previously the Government's indication that studies to draft a new Agricultural and Forestry Work Bill were being carried out and that the Bill would be submitted to the Grand National Assembly after consultation with, inter alia, the social partners.

The Committee notes that, according to the Government, the draft law on the amendment and the repeal of certain sections of the Labour Act (No. 1475), providing for the inclusion of agriculture and forestry workers within the scope of the Labour Act is foreseen. The views of the social partners and the relevant ministries are being evaluated by a commission established for this purpose.

The Committee requests the Government to continue to supply information on any development in this regard in so far as it concerns minimum wage fixing in the agricultural and forestry sector.

Article 3, paragraph 3. In its previous comments, the Committee requested the Government to indicate the manner in which employers and workers in the agricultural sector were associated in the working of the Minimum Wage Fixing Board.

The Committee notes that, according to provisional section 4 of Labour Act No. 1475 and section 15 of the Minimum Wage Regulation, representatives from the Ministry of Forestry, the Ministry of Agriculture and Rural Affairs, the Turkish Chamber of Agriculture and the most representative trade union in the field of agriculture and forestry participate in the work of the Minimum Wage Fixing Board, along with the other regular members.

The Committee recalls that, under *Article 3, paragraph 3, of the Convention*, the employers and workers concerned should take part in the operation of the minimum wage fixing machinery on a basis of complete equality. It requests the Government to send a copy of the text appointing the present members of the Minimum Wage Fixing Board.

Article 4, paragraph 1, and Article 5, in conjunction with point V of the report form. According to TÜRK-IŞ, the Government has taken no serious steps to inform the hundreds of thousands of agricultural workers on the minimum wage rates in force. Furthermore, there is no effective supervision, inspection and sanctions for the enforcement of the minimum wage rates in agriculture and this situation is further aggravated by the absence of labour law for agricultural and forestry workers in spite of numerous bills and promises.

The Committee requests the Government to provide information in respect of the above observation. It also requests the Government to supply information on the effect given in practice to the Convention in the agricultural and forestry sector: (i) by supplying the available statistical data on the number and various categories of workers covered by the minimum wage regulations; and (ii) by indicating, for example, the results of the inspections carried out, the violations reported and the sanctions imposed.

In addition, the Committee recalls that in a previous report the Government stated that a Bill to multiply by five the amounts of the fines set out in Act No. 1475 had been included on the agenda of the National Assembly. The Committee asks the Government to supply information on the adoption of the said Bill.

[The Government is asked to report in detail in 1998.]

Uruguay (ratification: 1953)

See under Convention No. 131.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Colombia, Comoros, Djibouti, El Salvador, Gabon, Grenada, Malawi, Papua New Guinea, Paraguay, Seychelles, Sierra Leone.*

Convention No. 100: Equal Remuneration, 1951

Angola (ratification: 1976)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that as the Government's report gives no further particulars in reply to the earlier direct requests, the Committee must return to the question in a new direct request. It hopes that the Government will not fail to take the necessary steps and supply the information requested.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Djibouti (ratification: 1978)

The Committee notes that the Government's report does not contain any new information in reply to previous direct requests, and must therefore reiterate the question in a new direct request. It hopes that the Government will not fail to take the necessary measures and to provide the information requested.

Dominican Republic (ratification: 1953)

The Committee notes the Government's reports and the attached detailed statistical information on collective agreements and labour inspections.

1. The Committee notes that, according to the Government, although section 194 of the Labour Code provides that there shall be equal pay for equal work, the labour administration authorities, when applying the Convention, interpret this provision to mean equal pay for work of equal value. The Committee asks the Government to supply examples of legal decisions which have applied or interpreted in a broader sense the terms used in section 194 of the Labour Code. The Committee suggests that the Government

introduce formally the concept of work of equal value since the term "equal work" may lead to ambiguity in its application since it can be interpreted to mean "the same" or "equal in quality, nature or status", or "of identical value".

2. The Committee notes with interest the "Study on minimum wages in the Dominican economy", May 1996, which was attached to the report. Part IV of the study "Comparison between men's and women's wages" indicates that in the free trade zone enterprises and public institutions sampled there was no difference relating to the gender of the person engaged in work and wages were allocated to the job without taking into account the sex of the worker. There was a wage gap in the government institutions examined (where the average monthly wage was higher for women: [illegible],171.30 for female employees and RD$5,114.20 for male employees), due to the [illegible] in the sample of schoolteachers who are mostly women and whose [illegible] increased recently. Furthermore, it emerges from the copies of collective [illegible] free trade zones supplied by the [illegible] (including payment of overtime) [illegible]'s sex. Nevertheless, this publication, prepared by [illegible] Labour, shows that in the enterprises covered by the sample, the average wage per month was RD$3,624 for men and only RD$2,590.30 for women. The Committee would be grateful if the Government would provide information as to whether it is carrying out studies into the reasons for this difference; and, if so, to supply copies of the results of this research.

Finland (ratification: 1963)

The Committee notes the detailed information provided by the Government in its report as well as the comments concerning pay differentials from the Central Organization of Finnish Trade Unions (SAK) and the Confederation of Unions for Academic Professionals (AKAVA).

1. *Article 2 of the Convention.* The Committee notes from the information provided that the gap between the average earnings of men and women has widened; whereas women earned 76.8 per cent of men's earnings in 1992, they earned only 74.7 per cent in 1994. The Committee also notes that information on trends and prospects for women's employment in the 1990s in Finland annexed to the report suggests that general economic fluctuations are responsible for fluctuations in the size of the gender wage gap, whereby it appears that women are more vulnerable in times of economic recession because of the sector- and type-specificity of their employment. The Committee would be grateful to receive the Government's comments on this suggestion as well as information on the specific wage differential in female-dominated, male-dominated, low-paid and typically part-time occupations.

2. The Committee notes the 1995 amendments to the Act concerning equality between men and women, which place a duty on employers to promote equality (section 5) and to include measures for equality in their annual staff plans. The Committee asks the Government to supply information on how wage equality, in particular, is promoted in these annual plans and, if possible, to send copies of some of these plans.

3. Noting that in the course of 1993-96, the Equality Ombudsman issued 26 opinions on remuneration and that the number of requests for opinions on wage discrimination continued to increase, the Committee would be grateful if the Government could provide information on the trends in these discrimination allegations, and the measures undertaken to implement the opinions of the Ombudsman. The Committee would also appreciate receiving information on the current number, and the nature, of allegations of wage discrimination received by the Ombudsman.

4. *Article 3.* The Committee notes with interest the information in the final report of the job evaluation working group set up by the central labour market organizations. Considering that, according to information from the Government, some of the recommendations and suggestions put forward by the working group, such as the setting up of a working group to monitor job evaluation for the purpose of promoting the development and introduction of job evaluation schemes, have been implemented, the Committee would appreciate receiving information on the composition and mandate of this new working group, especially with regard to the extent that this includes the recommendations and suggestions of the earlier working group. The Committee would also be grateful to receive a copy of the manual on the development of evaluation schemes.

5. The Committee notes the information provided regarding the number of collective agreements concluded within the framework of the ongoing re-evaluation of the state pay system which is based on linking wages to job demands and individual work performance and competence, as well as on the jointly achieved overall result of a given work community. Noting that before 1996, these agreements covered only 5 per cent of the employees under the state budget, the Committee requests the Government to provide information on the agreements that were expected to be concluded since then, as indicated in the report.

Guinea-Bissau (ratification: 1977)

The Committee notes with regret that, as the Government's report gives no further particulars in reply to the earlier direct requests, the Committee must return to the question in a new direct request. It hopes that the Government will take the necessary steps and supply the information requested.

Madagascar (ratification: 1962)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

> The Committee notes the observations from the Union of Commercial On-Board Staff of AIR MADAGASCAR sent to the Government by letters of 23 January and 4 March 1996. These observations concern the unequal remuneration arising from the difference in the age of retirement between male and female on-board staff, which is set at 50 years for men and 45 years for women by regulation 12 of the 1994 Regulations respecting the conditions of work and remuneration of AIR MADAGASCAR commercial on-board staff.
>
> The Committee hopes that the Government will send its comments on the issues raised in the observations so that it may examine them at its next session.
>
> The Committee is addressing a direct request to the Government concerning other points.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Morocco (ratification: 1979)

Noting that, in spite of the statistical information supplied in the Government's report on the distribution of the sexes in senior public posts, the report contains only general information in reply to the Committee's previous comments, the Committee requests the Government once again to provide information on the following points.

1. *Public sector*. The Committee notes that the basic salary scale for state officials (1988) supplied by the Government makes no discrimination according to the workers' sex. Nevertheless, it wishes to recall that the adoption of gender-neutral salary scales is a necessary condition for application of the principle of equal remuneration for men and women as set out in the Convention, but is not sufficient alone since salary discrimination may also result from the existence of occupational categories or jobs reserved for women. The fact that women workers are concentrated in certain jobs must also be taken into consideration when a government assesses the application of the principle of equal remuneration for work of equal *value*. The Committee therefore requests the Government to indicate the categories of employment and sectors of activity in the public service occupied chiefly by women.

2. In addition, noting that although it is higher than in 1994, the number of women in middle- and high-level managerial posts in the public administration remains very low (no women in the 26 posts as secretary general of a ministry; eight central administration directors out of 179 posts; 30 women division chiefs out of 885 posts; and 100 women branch chiefs out of 1,854 posts), the Committee wishes to recall also that when the State is an employer or controls business it must — under *Article 2, paragraph 1, of the Convention* — ensure the application of the principle of equal remuneration. For further details, the Committee refers to paragraphs 25-28 of its General Survey on equal remuneration, 1986. Consequently, the Committee again requests the Government to indicate the measures taken or contemplated to increase the percentage of women in supervisory and senior posts in the public service in order to implement the principle enshrined in the Convention.

3. Observing that the scale of remuneration supplied by the Government concerns only basic wages, the Committee emphasizes that under *Article 1, paragraph (a) of the Convention*, equal remuneration is not restricted to the ordinary, basic or minimum wage but applies also to "*any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment*". The Committee therefore requests the Government to indicate how application of the principle of equal remuneration is ensured in regard to the components of remuneration which are paid or granted in addition to the basic wage.

4. Since its previous comments regarding the application of *Article 3 of the Convention* have received no reply, the Committee would be grateful if the Government would indicate the methods which are used to undertake an objective appraisal of jobs to ensure that the system of job classification applied in the public sector is actually based on objective criteria, namely, free of any discrimination on the basis of sex.

5. *Private sector*. The Committee notes that the Government makes no allusion in its report to the survey on wages and working hours launched in 1992. It therefore requests the Government, once again, to inform it of the results of the survey, together with recent statistics on minimum wages, average earnings for men and women, as far as possible by occupation, branch of the economy, seniority and skills level, with an indication of the corresponding percentage of women at the various levels.

Nepal (ratification: 1976)

1. In its previous comments, the Committee expressed concern about wage discrimination between men and women, especially in the organized tea plantations. This same concern was shared by the Conference Committee in its June 1997 discussion. The Government stated that the principle of equal remuneration was applied in such a manner that its infringement was penalized, but that certain immunities had been granted

exceptionally to employers in tea estates in order both to provide incentives to that industry — which is in an infant stage of development — and to enhance the employment opportunities of female workers. The Government had also stated that this exemption, which is a temporary arrangement, has taken into consideration the national customary practices and prevailing wage differences in tea plantations.

2. In its previous observation, the Committee had reiterated that any scheme which denies women the basic human right of equal pay is a violation of the Convention and, in this case, of the national constitutional and legal provisions. It had also indicated that if such a scheme is in line with national customary practices and prevailing wage differences in tea plantations, there was even more concern over the application of the Convention, as it would appear that the exemption in question was granted in order to legitimize an existing practice that already contravened national legislation and the Convention. Moreover, this raised questions about the intended duration of the exemption. Accordingly, the Committee had urged the Government to remove forthwith the exemption from equal pay for women workers granted to employers in tea plantations and in any other industry in which similar exemptions have been made. If measures were needed to encourage the development of tea plantations and to encourage women's employment in that sector, the Committee had suggested that the Government explore the introduction of a range of non-discriminatory measures, such as granting special tax relief to employers in the industry.

3. The Committee notes that during the discussion in the Conference Committee, the Government representative stated that workers received equal pay without discrimination in the public sector tea plantations and that steps were being taken by the Government to ensure that a similar situation prevailed in the privately owned plantations. In particular, in line with the recommendations contained in the report of the ILO mission to advise on wage fixing and equal pay (presented to the Government in 1993), a tripartite minimum wage-fixing committee had been constituted, which had fixed the same minimum wage for male and female tea plantation workers. In addition, the Government representative stated that the monitoring and supervision of the wages paid in privately owned plantations had been strengthened. The Government's report confirms that a minimum wage in line with the Convention is being enforced in the plantation sector.

4. The Committee notes these initiatives but remains concerned that the Government has not referred, either in the Conference Committee or in its report, to any measures taken to remove the exemption which allows employers in tea plantations to pay lower wage rates to women workers. Accordingly, the Committee requests the Government to provide a copy of the legal instrument which gave rise to the situation in which women workers in tea plantations are excluded from the guarantees accorded by both the Convention and the national Constitution, and a copy of the instrument repealing that exemption.

5. The Committee requests the Government to furnish copies of all documents pertaining to the new tripartite wage-fixing committee, including any rules, orders or administrative instructions relating to its composition and functions, together with copies of the specific instrument fixing the minimum wage in tea plantations. In addition, the Committee asks the Government to forward copies of the studies and surveys that, according to the information provided by the Government to the Conference Committee, had been undertaken to ascertain whether wage discrimination based on sex existed in privately owned tea plantations.

6. In previous observations, the Committee has sought information on the means by which the principle of equal remuneration for work of equal value is applied in

situations where women and men carry out different work noting, in this connection, that article 11(5) of the 1990 Constitution proscribes discrimination between men and women in regard to remuneration only "for the same work". Section 11 of the 1993 Labour Rules — which provides that "In the event that male or female workers or employees are engaged in work of the same nature in an establishment, they shall be paid equal remuneration without any discrimination ..." — is also a narrower formulation of equal pay than that required by the Convention. The Committee pointed out that the principle of the Convention is intended to cover not only those cases where men and women undertake the same or similar work, but also the more usual situation where they carry out different work. In order to determine pay structures, the Committee pointed out that the requirements of the different work carried out by men and women should be evaluated in a gender-neutral manner on the basis of objective criteria that take adequate account of the various aspects of men's and women's work. As the Government has provided no information in this regard, either in the Conference Committee or in its report, the Committee must once again express the hope that the Government will address this matter, in line with the recommendations made by the ILO mission and that its next report will contain detailed information on the measures taken.

Sweden (ratification: 1962)

The Committee notes the detailed information provided by the Government in its report and attached documentation. It also notes the comments furnished by the Swedish Employers' Confederation (SAF), the Federation of Swedish County Councils and the Swedish Trade Union Confederation (LO).

1. The Committee recalls that under the provisions of the Equal Opportunities Act, 1991, plans aimed at promoting equality, which are to be drawn up each year by employers of more than 9 employees, are to contain a summary of the measures needed at the workplace in a number of specified areas and are to indicate which of those measures the employer intends to commence or implement during the coming year. In 1994, a new provision concerning equal pay was introduced into the Act to require employers to review annually the existence of pay differentials between men and women, both in different types of work and for different categories of employees (section 9a). An outline of these findings and the measures warranted by the review are also to be included in the equality plans (section 11). The Committee also notes from the comments of the SAF that if and when the results of the pay survey indicate a need for a more detailed study and analysis, the employer is free to decide the details of how such a study should be performed, after consulting the workers' representatives. The SAF also wishes to stress that, under the Act, job evaluation is not required to survey pay differentials, to correct imbalances in wages between the sexes or to create a wage structure free of discrimination. The SAF states that, based on its experience, generalized job evaluation is not a suitable measure to meet the future needs of a good pay structure.

2. The Committee notes that the Government and, more particularly, the Equal Opportunities Ombudsman has, on the contrary, encouraged this tool among the strategies designed to reduce wage gaps based on the sex of the worker and, in this regard, has published handbooks on wage discrimination and job evaluation which are intended to serve as practical guidance for employers and trade unions. Noting the action taken by the Ombudsman regarding the presentation of equality plans by employers under the Act, the Committee would be grateful if the Government would provide such information on the implementation of sections 9a and 11 of the Act.

3. The Committee notes with interest that, in response to Parliament's call for special action to be taken in regard to wage discrimination involving work of equal value, the increased activities of the Equal Opportunities Ombudsman have resulted in the number of complaints by individuals rising from about 30 in 1993 to about 700 in 1996, a figure which includes complaints filed by groups of female employees, especially in the health sector. The Committee notes, in this regard, the detailed information furnished by the Government on the two cases concerning equal pay for work of equal value that the Ombudsman has taken to the Labour Court. It would be grateful if the Government would continue to provide such information, particularly on the outcome of the Labour Court cases

4. The Committee also notes with interest that in 1994, the Work Environment Fund was commissioned by the Government to "set aside funding for research, development and knowledge dissemination on the subjects of wage formation, job valuation and pay differentials between women and men". This assignment, which was organized under a special research and development programme, "Wage Formation and Job Valuation" was transferred to the Working Life Institute in 1995 and will continue through 1997. The Committee looks forward to receiving information on the work undertaken in this programme.

5. The Committee notes the report of Statistics Sweden analysing the use of official pay statistics to assess equality of opportunity. This report states that labour market statistics should provide a basis for describing various differences and for analysing different types of discrimination and should be based on job variables (for which a detailed job classification is important), personal variables (such as age, sex, education, seniority) and corporate variables (type of business, sector, size of the establishment etc.). Commenting on this report, the Federation of County Councils points to the complexity of reporting and analysing gender statistics. The Federation states that although in county councils women earn, on average, 74 per cent of men's earnings, women earn more in ten of 19 groups. According to the Federation, where women earn less than men, it is a question of age; at the lower ages, the situation is more equal. The Committee observes that the Federation does not explain why the wage gap between men and women should widen as women age, since in theory they should benefit equally with men from increased experience and seniority. The Federation's own statistical analyses indicate, however, that occupations dominated by women are, in general, paid less than those of men. The LO has addressed other difficulties faced in securing equal remuneration. It notes that the issue of indirect discrimination is a concept that is difficult to handle in litigation. In addition, the LO stresses the difficulty of gaining access to all information in a discrimination case, as most of the information required is in the hands of the employer; the LO is concerned to have this issue better clarified and implemented in the national legislation. The Committee observes that it has often referred to these various matters, both in the comments addressed to governments on the application of the Convention and in its general surveys on the Convention. The problem of lacking access to information necessary for equal pay claims and the difficulties posed by indirect discrimination are, to some extent, alleviated by the reversal of the burden of proof. Moreover, as the Committee has stated on many occasions, and most recently in its 1996 Special Survey on Equality in Employment and Occupation (paragraph 305), the creation of a general context of equality is necessary if the impediments to equality are to be overcome and if real and sustained progress is to be made.

Uruguay (ratification: 1989)

The Committee notes the comments made by the trade union of the National Administration of Electrical Power Plants and Transmissions (UTE) — Inter-Union Assembly of Workers — National Confederation of Workers (PIT/CNT) concerning cases of sex discrimination occurring in the administration in question. It is alleged that owing to the application of social security standards specific to them, women receive sums lower than those paid to men for the purposes of benefits relating to voluntary redundancy. Furthermore, the Committee notes that the Government states that complaints have been submitted to the General Labour Inspectorate concerning the situation, which are now under consideration. The Committee observes that, according to paragraph 17 of the 1986 General Survey on equal remuneration, allowances made under a public system of social security are not to be considered as part of remuneration and are not therefore covered by the Convention. However, the Committee will deal with certain aspects of these comments relating to discrimination in employment under Convention No. 111.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Angola, Belarus, Bolivia, Bulgaria, Burkina Faso, Cameroon, Central African Republic, Chile, Comoros, Côte d'Ivoire, Croatia, Czech Republic, Djibouti, France, Guinea, Guinea-Bissau, Indonesia, Islamic Republic of Iran, Iraq, Ireland, Italy, Jamaica, Kyrgyzstan, Latvia, Libyan Arab Jamahiriya, Lithuania, Madagascar, Malawi, Morocco, Mozambique, Niger, Paraguay, Rwanda, Saint Lucia, Sao Tome and Principe, Senegal, Sierra Leone, Sri Lanka, Sudan, Swaziland, Tajikistan, Togo, Tunisia, Venezuela, Yemen*.

Information supplied by *Costa Rica, Dominican Republic* and *Equatorial Guinea* in answer to a direct request has been noted by the Committee.

Convention No. 101: Holidays with Pay (Agriculture), 1952

A request regarding certain points is being addressed directly to *Sierra Leone*.

Convention No. 102: Social Security (Minimum Standards), 1952

Bolivia (ratification: 1977)

1. In its previous comments, the Committee noted that under Supreme Decree No. 22-578 of 13 August 1990 the social security system no longer provides for the payment of family benefit as prescribed by *Article 42, Part VII (Family benefit) of the Convention*. Since the Government's report has not been received, the Committee can but reiterate the hope that the Government will adopt the necessary measures to re-establish a family benefit scheme conforming to the provisions of Part VII of the Convention.

2. The Committee also refers to its comments on Convention No. 128 concerning invalidity, old-age and survivors' benefits, 1967, and again expresses the hope that the Government will provide a detailed report for the applicable branches of Convention No. 102, taking account of the social security provisions currently in force in Bolivia. The Committee trusts that the report will also contain the Government's observations on the communication from the World Federation of Trade Unions, a copy of which was sent to it in August 1997.

Croatia (ratification: 1991)

1. With reference to its previous observation, the Committee recalls that the Union of Autonomous Trade Unions of Croatia (SSSH) alleged, in the comments dated 15 March 1995, that a large number of workers in Croatia were denied health protection on the basis of section 59 of the Health Insurance Act enforced as of 13 August 1993 which provides, in particular, that for contribution payers who fail to pay the insurance contribution, the use of health protection funded by the Croatian Institute for Health Insurance shall be reduced to the right to emergency medical aid only. The SSSH pointed out that under the said legislation the obligation to pay contribution rests with the employer who deducts it from the wage of the insured workers employed by him, and that in case the employer fails to pay the contribution, the insured worker has no legal possibility personally to pay the contribution, nor does he have any other legal means of recourse to force the employer to pay it, while the Institute to which the contributions are paid has the legal possibility to exact payment from employers. The Committee further recalls that, in its reply, the Government indicated that the amendments to the Health Insurance Act, in force since July 1996, empower the Institute to collect arrears of contributions, which measure would be directed exclusively towards employers who are obliged to pay them. The Committee has therefore asked the Government to supply a copy of the amendments in question and to confirm that the legal provisions contained in section 59 of the Health Insurance Act, as well as the practice referred to by the SSSH, concerning the restriction of health protection funded by the Institute of Health Insurance to emergency medical aid, in case of non-payment of contributions by the employers on behalf of their insured workers, were in fact abolished in conformity with *Article 69 of the Convention*.

The Committee notes the new comments communicated by the SSSH in April and September 1997, as well as the Government's reply to them received 1 December 1997.

As regards the amendments referred to by the Government, the SSSH states that the Government passed a regulation concerning deduction of insurance contributions before payment of workers' wages, but this regulation did not have any effect; as regards the above-mentioned provisions of section 59 of the Health Insurance Act, they remained unchanged in the text of this Act published in the *Official Gazette* No. 1/97 of 3 January 1997. Thus, according to the SSSH, the reduction of the right to health care continues to be implemented for categories of workers whose employers fail to pay contributions on their behalf and became a mass phenomenon. As a result, a great number of citizens are denied special health care and hospital care, including surgery, diagnostic examination and numerous health services guaranteed by the Constitution of the Republic of Croatia and by Convention No. 102. In support of these statements, the SSSH provides translation in English of two letters, dated 24 June and 23 July 1997, sent respectively by the national Croatian Institute for Health Insurance to its regional offices and by the regional Zagreb office of the Institute to health centres and physicians. Both letters in their English translation expressly invoke the provisions of section 59 of the text of the Health Insurance Act and ask health centres and physicians to reduce benefits of health care payable by the Croatian Institute for Health Insurance to the right to emergency aid in respect of all employees and members of their families contribution-payers who have not partially or totally settled their contributions for three months and more, subject to certain exceptions. Attached to the second letter is the partial list of persons to whom this measure is applied. This letter expressly states that, if beside emergency aid, the health centres and physicians give these persons other medical assistance, the Institute will not cover their expenses. Finally, the SSSH informs that, as early as 9 March 1995 and subsequently on 17 April 1997, it has requested the Constitutional Court to pronounce on the constitutionality of section 59 of the Health Insurance Act, and that separate letters were also sent at this latter date to the Government and the Parliament drawing attention to the case.

In its reply, the Government indicates that section 59 of the Health Insurance Act (*Official Gazette* Nos. 1/97 and 109/97) provides that the Institute is obliged to monitor the collection of contributions for compulsory health insurance, and regulates that health care may be reduced to urgent medical treatment if the contributions have not been paid; urgent medical treatment meaning in fact the provision of health care which is needed for the removal of the risk to one's life or for the prevention of deterioration of one's health condition. From the circular letters sent by the Institute and its regional office in Zagreb, it is clear that this case refers to the reduction of health care rights and not to the denial of these rights, as alleged by the SSSH. Besides, these letters speak of the provision of urgent medical treatment and not of the "emergency aid", as it is stated by the SSSH. Furthermore, the instructions from the circular letters specify that the reduction of health care does not apply to children under 18 years of age; pregnant women receiving health care with regard to pregnancy and confinement; soldiers in the homeland war; and certain joint-stock companies. On the basis of these arguments, the Government concludes that this is not a case of the deprivation of rights to health care, particularly as regards the rights guaranteed by *Articles 8 and 9 of the Convention*, and that the information contained in the complaint of the SSSH referring to the activities of the Institute in the application of health insurance regulations is incomplete and, therefore, to a large extent not true. Finally, with respect to the SSSH's statement that workers can not have influence on the payment of contributions by their irresponsible employers, the Government specifies that, according to the Institute, the irregularity in the payment of health contributions is frequently manifested for the category of insured who are self-employed persons and thus are obliged to make their contribution payments by themselves.

The Committee takes good note of the information supplied by the Government. It did not find however a reply to its request formulated in its previous observation asking for the text of the amendments to the Health Insurance Act, which, according to the Government, were to ensure that arrears in insurance contributions would be collected by the Institute so that these measures will be directed exclusively towards employers who are obliged to pay them. The Committee further observes that the Government does not contest the SSSH's statement that the provisions of section 59 of the said Act concerning the restriction of health protection funded by the Institute in respect of workers for whom contribution was not paid by their employers, continue to be widely applied in practice. The Government insists however, with reference to *Articles 8 and 9 of the Convention*, that the effect of such restrictions consist not in totally depriving the persons concerned of the right to health care, but of reducing it to urgent medical treatment which, according to the Government, has a larger meaning than the term "emergency aid" used by the SSSH and includes not only the removal of the immediate risk to life, but also "the prevention of deterioration of one's health condition". It also indicates the categories of persons to whom this limitation is not applicable.

The Committee wishes to point out that the types of the medical care to which persons protected should be entitled as of right in respect of a condition requiring medical care of a preventive or curative nature, in accordance with *Article 7 of the Convention*, are laid down in its *Article 10*, and that the purpose of *Articles 8 and 9* in this respect is to ensure respectively that such medical care should be provided for any morbid condition, whatever its cause, and be available for all persons falling under the scope of *Article 9*. It recalls that *Article 69 of the Convention* which enumerates the cases in which benefits provided under the Convention, including medical care, may be suspended, does not refer to the situation of non-payment of contributions on behalf of the insured person. The Committee would therefore once again ask the Government to indicate the measures taken or contemplated to bring its national legislation (section 59 of the Health Insurance Act) and practice in this respect in compliance with the Convention. The Committee would be equally grateful to receive a copy of the decision of the Constitutional Court of the Republic of Croatia on this case, if taken.

The Committee furthermore notes a new communication from SSSH received on 20 November 1997, in which it supplies a copy of the letter of an opposition Member of Parliament to the President of the House of Deputies requesting a public written reply on the measures contemplated in order to harmonize section 59 of the said Act with the Croatian Constitution and Convention No. 102. As the Government had not yet the opportunity to reply to this communication, which was transmitted to it by the Office, the Committee hopes that its next report would include a copy of such written reply.

Finally, the Committee wishes to draw the Government's attention to the fact that its comments refer exclusively to the granting of medical care as provided for under *Articles 7, 8 and 10 of the Convention* to the employees protected for whom payment of contributions under the Croatian law is a legal obligation of their employer, and not to the self-employed persons who, as stated by the Government, have to pay their contributions by themselves.

2. The Committee notes the communications, dated 23 April and 12 August 1997, from the Association of Clubs of Military Retirees of the Union of Retirees of Croatia concerning the application of Conventions Nos. 48 and 102, as well as the Government's reply to them. In view of the fact that this reply was received shortly before the opening of the Committee's session, it decided to examine the questions raised as regards the payment of retirement pensions of the members residing in Croatia of the former federal army (JNA) at its next session, together with any additional information which the Government may wish to supply in this respect.

[The Government is asked to report in detail in 1998.]

Mexico (ratification: 1961)

The Committee notes the Government's report for the period from July 1996 to June 1997 which supplies information relating to the entry into force on 1 July 1997 of the new Social Security Act. The Government's report was received at the Office in November 1997. The Committee also notes a communication on the application of the Convention, sent by a group of workers' organizations, which was brought to the notice of the Government in August 1997. The Committee intends to examine at its meeting in 1998 the information supplied by the Government in its report as well as any observations it may wish to make on the matters raised by the workers' organizations. The Government is also requested to supply the text of any implementing regulations for the new Social Security Act.

Peru (ratification: 1961)

I. 1. The Committee notes the discussion that took place in the Committee on the Application of Standards at the 85th Session of the Conference (June 1997), and the Government's report received in October 1997. In its report the Government states that the Private Pensions System cannot be examined within the scope of Convention No. 102. The Convention was based on a public social security system which was the only type that existed in 1952 when the Convention was adopted. On registering ratification of the

Convention in 1961, the Peruvian State accepted certain parts of the Convention and availed itself of the temporary exceptions allowed by some of its Articles. The Government also submits that the Private Pensions System introduced in 1992 is not subject to observations under Convention No. 102 since it is an *alternative and different* system to the one provided for in the Convention. In his statement to the Conference Committee, the Government representative held that the Private Pensions System, in view of its principles and basic characteristics, cannot be understood or analysed within the scope of the Convention.

2. In its conclusion, the Conference Committee shared the opinion that the coexistence in the social security system of both a public and a private scheme, as has been the case in Peru since 1992, is not in itself incompatible with the Convention, which allows the minimum level of social security to be attained through various methods. The Committee shared the concern that the minimum levels of benefit for retirement and invalidity guaranteed by the Convention might not be guaranteed by either the public or the private social security system, though for different reasons.

3. In view of the foregoing, the Committee considers it appropriate to reiterate the terms of its observation of 1996 in which it recalled that, as illustrated in its General Surveys of 1961 and 1989, Convention No. 102 was conceived in a highly flexible manner. It is possible to achieve the same level of social security through various approaches. The Conference deliberately refused to adopt a rigid terminology which would have been ill-suited to the particularly wide range of national solutions, still less to the rapid and constant developments in systems of protection (paragraph 41 of the General Survey of 1989). Nevertheless, the Convention sets forth a number of practical criteria of general applicability for the organization and functioning of social security systems *(Articles 71 and 72)*.

4. Furthermore, the Committee asks the Government to respond to the following points which it already raised in its previous comments. Workers entering the Peruvian labour market for the first time have, in theory, the option of joining one or other of the systems. However, once they have registered with a private pension fund administrator, they can no longer rejoin the system administered by the Insurance Standardization Office (ONP). The Private Pensions System which currently coexists with the public system may end up replacing it. The benefits provided to workers under the Private Pensions System include retirement and invalidity benefits, which are covered by *Parts V and IX of the Convention*, which have been accepted by Peru.

II. During the discussion in the Conference Committee in June 1997, the Government representative cited the Government's earlier statements to the effect that the maximum amount paid in retirement benefits under the public pensions system was absolutely insufficient and retained no relation to the worker's contributions. The Government representative submitted that the implementation of the Private Pensions System had brought many benefits to the country as a whole, since the savings it had produced had been invested in a number of projects which generated new jobs. He added that according to studies conducted in Peru, it could be predicted that persons affiliated to the Private Pensions System would receive significantly better pensions than those provided by the public system. The Committee asks the Government to include copies of the above studies in its next report, since it does not have the necessary statistical information on the Public Pensions System and the Private Pensions System to settle the matters raised in its comments (observation and direct request).

III. The Committee trusts that the Government will be able to provide a response in its next report to the matters pending in connection with the Private Pensions System as it relates to the following provisions of the Convention:

1. *Part V (Old-age benefit), Articles 28 and 29, paragraph 1 (in relation to Article 65 or Article 66).* The rate of the pensions provided by the Private Pensions System does not appear to be determined in advance, since it depends on the capital accumulated in individual capitalization accounts, and particularly on the earnings from these accounts. The Committee again recalls that, in accordance with *Article 29, paragraph 1,* in conjunction with *Articles 28 and 65*, an old-age benefit at least equal to 40 per cent of the reference wage has to be secured to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 30 years of contribution. The Committee would therefore be grateful if the Government would supply statistical information to enable the Committee to make a full evaluation of the extent to which the old-age benefit, in all cases and irrespective of the type of scheme selected, attains the level prescribed by the Convention. In this connection, the Committee notes that under section 13 of Act No. 26504 of 1995 amending the Health Benefits Scheme, the National Pensions System, the Private Pension Funds System and the structure of contributions to FONAVI, the requirements and conditions were established under which the Private Pensions System could guarantee a minimum pension to its affiliates (resolution No. 484-95-EF/SAFP adopting and amending the Supervisory Standards of the Private System of Pension Fund Administrations, with regard to the award of benefits and the registration of insurance companies). The Committee reminds the Government that it might include information in its next report on the practical effect of the above provisions, in terms of securing to all persons protected who have completed a period of 30 years of contribution a minimum benefit which attains the level prescribed by the Convention *(Article 66).*

2. *Article 30.* Please indicate the measures which have been adopted or are envisaged to guarantee the full application of this provision of the Convention (payment of the benefit throughout the contingency) with regard to the "programmed retirement" system, under which monthly withdrawals may be made from the account until the accumulated capital is exhausted, in contradiction with the above Article.

3. *Part IX (Invalidity benefit), Article 58.* Please indicate how full effect is given to this provision of the Convention (payment of the benefit throughout the contingency or until an old-age benefit becomes payable) in the event of the permanent total invalidity of a worker who has selected the "programmed retirement" system.

4. *Part XIII, Article 71, paragraph 1.* The Committee notes that the cost of the benefits, certain administrative expenses and certain commissions are paid entirely by the worker who is insured under a Pension Fund Administrator (AFP). Employers' contributions appear to be of a voluntary nature. According to *Article 71, paragraph 1,* "the cost of the benefits provided (...) and the cost of the administration of such benefits shall be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected". The Committee once again requests the Government to indicate the measures which have been adopted or are envisaged to give full effect to the Convention in this respect.

5. *Article 71, paragraph 2.* The Committee recalls that, under the provisions of the Convention, the total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of employees and their spouses and children. In order to be in a position to

assess the effect given to this provision of the Convention, the Committee again requests the Government to provide in its next report the statistics requested in the report form under this Article of the Convention for both the private pensions and health systems and the schemes administered by the public system.

6. *Article 72, paragraph 1.* The Committee requests the Government to indicate the measures which have been taken or are envisaged, in the context of the Private Pensions System, to give effect to this provision of the Convention which states that, where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature, representatives of the persons protected shall participate in the management, or be associated with it in a consultative capacity, under prescribed conditions.

IV. *System of pensions administered by the ONP.* The Committee draws the Government's attention to the following points in particular:

1. *Part V (Old-age benefit), Article 29, paragraph 2.* In its report the Government again states that Legislative Decree No. 25967 of 1992 provides that a worker who has contributed for a period of not less than 20 full years may obtain an old-age pension. In the Government's opinion, the provision of Article 29, paragraph 2, of the Convention cannot apply to Peru's case since the legislation does not envisage a qualifying period of 30 years of contribution or employment for the benefit, as prescribed in Article 29(1)(a). The Committee again notes these statements and recalls that *Article 19, paragraph 1(a)*, refers to the maximum period of contribution, employment or residence which may be taken into account to determine whether the old-age benefit attains the level prescribed in the schedule annexed to *Part XI* (40 per cent of the reference wage for a standard beneficiary after a period of 30 years of contribution or employment). *Paragraph 2(a)* sets out an additional obligation under which, where the old-age benefit is conditional upon a minimum period of contribution, a reduced benefit shall be secured to any insured person who has completed a qualifying period of 15 years of contribution or employment. This obligation must be complied with irrespective of the fact that the period taken into account for the calculation of the pension is lower than 30 years. The Committee points out that the qualifying period laid down in the legislation is higher than the 15 year period established in the Convention. In these circumstances, the Committee again asks the Government to take the necessary measures to ensure that persons protected are entitled to a reduced benefit after 15 years of contribution, as provided by this provision of the Convention.

2. *Part XI (Standards to be complied with by periodical payments), Articles 65 and 66.* (a) The Committee recalls that in its previous comments it was noted that the periodical payments made by the ONP were of an absolutely insufficient nature. It would therefore ask the Government to indicate in its next report the measures taken to guarantee a level of benefit that is in accordance with the provisions of the Convention in the schedule annexed to *Part XI*, and to provide statistical information on this subject as required by the report form under *Articles 65 and 66* (see also point II of this observation).

(b) With regard to the adjustment of the rates of current periodical payments in respect of old age and invalidity, the Government states in its report that the statistics requested are in the process of being compiled by the competent bodies, and that the information will be sent shortly. The Committee notes the foregoing and recalls that for several years the Government has also referred to the possibility of carrying out an actuarial study of the pension and invalidity schemes administered by the ONP. The Committee trusts that the Government will be able in its next report to provide the statistics required by the report form under *Article 65 (Title VI)* which are necessary to assess the changes in long-term benefits in comparison with fluctuations in the cost of living. The Committee again recalls the importance that it attaches to the revision of the rates of current periodical payments in the case of these benefits, as required by *Articles 65, paragraph 10, and 66, paragraph 8.*

V. The Committee once again notes the observations made by the Association of Retired Oil Industry Workers of the Metropolitan Area of Lima and Callao. In its report the Government repeats that it is awaiting the decision of the Judiciary on the action brought under the Constitution by the above-mentioned organization. The Committee trusts that the Government will communicate the final court decisions on these cases.

VI. In view of the foregoing, the Committee asks the Government to ensure the full application of *Articles 71, paragraph 3, and 72, paragraph 2.* The Committee would recall that, under the terms of *Article 71, paragraph 3,* the State has to accept general responsibility for the due provision of social security benefits and take all measures required for this purpose, and that in accordance with *Article 72, paragraph 2,* the State has to accept general responsibility for the proper administration of the institutions and services concerned in the application of the Convention.

VII. *Parts II, III and VIII* (in conjunction with *Parts I, XI, XII and XIII*). The Committee notes the information provided by the Government in its report on Convention No. 24 and the adoption of the following new legislation: General Health Act No. 26482 and Act to modernize social security in the area of health, No. 26790 and its implementing regulation, No. 009-97-SA. This legislation establishes health insurance to be funded by the Peruvian Social Security Institute (IPSS) and provides for the participation of the bodies providing health services. The Government states, among other general considerations, that the health services ensured by the social security are complemented by the plans and programmes of these bodies, which include enterprises and institutions of the public or private sector independent of IPSS whose sole purpose is to provide health services based on their own or third party's infrastructure supervised by the superintendency of the bodies providing health services. According to the Government, the objective of these measures is not to privatize social security, but to permit the private sector to become active in this field. Taking into account the important changes introduced by the new legislation, the Committee would like the Government to supply a detailed report containing information on the legislation and practice, together with the necessary statistical data, in respect of each corresponding Article of the Convention, in accordance with the report form.

[The Government is asked to report in detail in 1998.]

Spain (ratification: 1988)

With reference to its previous comments made in 1993 and 1995 (November-December), the Committee notes the information provided by the Government, in particular that relating to *Part XIII (Common provisions), Article 72 (Participation of protected persons in system administration).* It also notes the adoption of Act No. 42/1994 to unify the benefits in respect of temporary incapacity for work and of temporary invalidity in a single temporary incapacity benefit. Furthermore, the Committee notes the information contained in the observation sent by the General Union of Workers (UGT).

1. *Part III (Sickness benefit), Article 18; Part VI (Employment injury benefit), Article 38 (in relation to Article 69(f)).* In its previous comments, the Committee observed that under the provisions of the General Social Security Act the benefits in

respect of temporary incapacity could be refused, cancelled or suspended where this incapacity was caused or prolonged by "recklessness" on the part of the beneficiary. The Committee notes with satisfaction that following the adoption of Act No. 42/1994 of 30 December, this cause of loss or suspension of entitlement to the temporary allowance has been removed from the text of section 132 of the General Social Security Act (LGSS).

2. *Part III (Sickness benefit), Article 18 in relation to Part XIII (Common provisions), Article 71, paragraph 3, and Article 72, paragraph 2).* (a) In its previous comments, the Committee requested the Government to indicate the measures taken to ensure that employers fulfil their obligation to pay sickness benefits from the fourth day up to the fifteenth day of incapacity, in accordance with section 131, paragraph 1, of the LGSS, and with Royal Decree No. 5/1992 of 21 July. In its report, the Government indicates that where a worker has submitted the necessary health documents, the cash benefit shall be paid to him automatically. The Government adds that the doctor usually assigned to the worker by the corresponding health services is empowered to determine his state of incapacity. Furthermore, the Government explains that the fulfilment of an employer's obligations is guaranteed by means of the complaints made to the Labour and Social Security Inspectorate. In addition, in the case of non-payment of benefits, a worker may appeal to the courts, although the Government does not know of any court decisions handed down in this regard. Finally, the Government indicates that no provisions exist to ensure that benefits are paid in case of the insolvency of an employer.

For its part, in a communication of 15 November 1996 the General Union of Workers confirms its previous observations in which it indicated that the reform of 1992 causes significant problems both by absolving the State of its responsibility emanating from the Convention and by generating codes of conduct and practices contrary to a worker's dignity. In particular, the enterprises which are unaware of the sanitary authorities whose task it is to draw up official documentation, subject workers to examinations by their own medical staff and begin by suspending the payment of benefits from the start of the period of sick leave, apart from where the leave is the result of surgery or an accident, so that workers are obliged to appeal to the courts for entitlement to the benefits which should be paid to them.

The Committee notes this information. It recalls that although the obligation of an employer to pay sickness benefits for a limited period may be considered to correspond to the case laid down in the Convention, such a system must still offer all the guarantees in respect of the payment of benefits in practice. In such a case, it is the responsibility of the State to take all the necessary measures to achieve this aim, in accordance with *Article 71, paragraph 3,* and *Article 72, paragraph 2.* The Committee considers that a worker should not, as a rule be obliged to refer his case to the Labour Inspectorate or to the courts in order to receive the sickness benefits which should be paid to him. Consequently, the Committee hopes that the Government's next report will contain detailed information on the steps taken against employers who do not fulfil their obligations, in particular to ensure that such employers do not replace doctors from the sanitary authorities usually empowered to conduct examinations with their own medical staff, and that they only suspend the payment of sickness benefits in the cases authorized under *Article 69*. The Committee also hopes that the Government will be able to take measures to ensure, in all cases, the payment of sickness benefits owed by an employer, both within the framework of Royal Decree No. 5/1992 and of section 77, paragraph 1(d) of the LGSS, in particular in case of the insolvency of an employer, or a delay in the payment by him of sickness benefits. The Committee asks the Government to provide, in its next report, complete information on the checks made by the Labour and Social Security Inspectorate, in particular on the number of inspections made, the cases of infringements recorded and the penalties imposed. Finally, the Committee requests the Government to provide copies of the texts of all administrative and court decisions adopted in this area as well as the texts of any new legislation which may be adopted.

(b) As regards more particularly the possibility offered to employers in the cooperation provided for in section 77, paragraph 1(d), of the LGSS, i.e. to assume direct responsibility for the payment of cash benefits in respect of temporary incapacity resulting from a common risk, the Committee notes the text referred to by the Government in its report, and in particular the Order of 18 January 1993 and Royal Decree No. 2064/1995 of 22 December. The Committee observes that in return for the obligation to pay sickness benefits directly, an employer benefits from a reduction in the contributions to be paid; in addition, an employer must allocate any possible surplus funds resulting from the cooperation provided for in section 77, paragraph 1(d) referred to above — which is only possible if it involves all the workers in an enterprise — to improving the cash benefits paid in the case of temporary incapacity. By contrast, in the texts examined the Committee has not found any other obligations likely to ensure, in all cases, the payment of sickness benefits in practice. In order to be in a better position to assess the situation, the Committee requests the Government to provide, in its next report, detailed information on the implementation in practice of section 77, paragraph 1 of the LGSS, by indicating in particular the number of enterprises which have engaged in such cooperation and the number of workers concerned. It also wishes to receive information on the checks made by the Labour and Social Security Inspectorate and on the their results (number of infringements, penalties and so on) (see also 2(a) above).

3. *Part VI (Employment injury benefit).* (a) *Article 34, paragraph 2.* Further to its previous comments and to the observation previously supplied by the UGT, the Committee notes that the Government's report does not contain any new information specifying the provisions of national legislation under which nursing care at home, dental supplies and eyeglasses are supplied to the victims of occupational injuries, in accordance with *Article 34, paragraph 2(c) and (e).* It hopes that the Government would provide this information in its future report.

(b) *Article 36 (in relation to Article 65, paragraph 10).* The Committee again requests the Government to provide all the statistics requested under *Article 65, Title VI,* in the report form adopted by the Governing Body in respect of the revaluation of the pensions allocated to the victims of occupational injuries in the case of permanent incapacity, or to their survivors in the case of death, together with information on the changes in the cost of living and the general level of earnings.

4. *Part IV of the Convention (Unemployment benefit), Articles 23 and 24.* In this regard, the Committee refers to the observations made under the Unemployment Provision Convention, 1934 (No. 44), at the present meeting and at the meeting held in November-December 1995 *(points 1 and 3).*

[The Government is asked to report in detail in 1998.]

Turkey (ratification: 1975)

Part XII of the Convention (Equality of treatment of non-national residents), Article 68. In reply to the Committee's comments concerning the affiliation of foreign workers to the employees' social security scheme established in Act No. 506, the Government refers to the information provided in its report on the application of Convention No. 118. Consequently, the Committee refers to the comments which it makes on this Convention.

It hopes that the Government will be able to take the necessary measures to bring the formal provisions of Act No. 506 relating to social insurance for employees, and in particular section 3, paragraph 2(a), into conformity with the principle of equality of treatment established by this provision of the Convention so as to provide for the compulsory affiliation of foreigners to the employees' social insurance scheme under the same conditions as for nationals. The Committee hopes that the Government will be able to indicate, in its next report, the progress made in this regard.

United Kingdom (ratification: 1954)

The Committee takes note of the report and of the various new legislative provisions supplied by the Government.

In reply to the Committee's previous comments, the Government states that it is currently in the process of examining the issues raised very carefully, but at this stage it is not yet in a position to respond in detail to the Committee's request for information. The Government reassures however that it will provide a full and detailed response on all of the issues following a review of its position in the light of the Committee's comments. The Committee takes good note of this statement. It hopes that the Government will not fail to supply a detailed report for its next session containing full information on the important questions raised in its direct requests of 1996 and 1997, as well as any additional information it would like to provide with respect to the comments on the application of the Convention received from the Trades Union Council on 28 November 1996. The Committee recalls in this respect that, in order to be able to examine in detail the Jobseekers Act, which entered into force in October 1996, together with its implementing regulations, which are of a particularly voluminous and complex nature, it should dispose of the full information on the impact of the new legislation on the application of ***each Article of Part IV (Unemployment benefit) and other relevant Parts of the Convention***, including statistics, provided in the manner set out in the report form. It trusts that such information would be supplied in the Government's next report and that it would deal in particular with questions of the definition of suitable employment and disqualification from unemployment benefit, in the light of the Committee's previous comments and the observations made by the TUC.

[The Government is asked to report in detail in 1998.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Barbados, Cyprus, Denmark, Iceland, Italy, Japan, Mauritania, Netherlands, Peru, Portugal, Senegal, Spain, Sweden, Turkey, United Kingdom***.

Information supplied by *Israel* in answer to a direct request has been noted by the Committee.

Convention No. 103: Maternity Protection (Revised), 1952

Bolivia (ratification: 1973)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1 of the Convention.* The Committee notes that the examination of the new draft Social Security Code, which was to extend the scope of maternity protection to certain categories of workers previously not protected (including workers in domestic service and

rural workers), has been deferred by the parliamentary commissions due to the amendments which are to be introduced in relation with the reform of Bolivian social security which is currently under examination. It once again hopes that the appropriate measures will be adopted in the near future, both in law and practice, to ensure that the above categories of women workers benefit from the protection set out in the Convention. It requests the Government to supply information on any progress achieved in this respect.

Article 3, paragraph 2. In its previous comments, the Committee noted that section 61 of the General Labour Act, and Presidential Decree No. 2291 of 7 December 1950, provide for maternity leave of 60 days whereas, according to this provision of the Convention, the minimum period of maternity leave is 12 weeks. In its report, the Government indicates that insured persons in both the private and public sectors are entitled to leave of 45 days before and 45 days after confinement under the social security legislation. It adds that the Social Security Code of 1956 goes further than Presidential Decree No. 2291 of 7 December 1950. The Committee recalls in this connection that the provisions of the Social Security Code, which is still not applied to certain categories of women workers, provide for the entitlement of women workers to benefits during their maternity leave under certain conditions, whereas the General Labour Act and Presidential Decree No. 2291 deal with the right to maternity leave. The Committee once again hopes that, in order to prevent any ambiguity, the Government will formally amend section 61 of the General Labour Act and Presidential Decree No. 2291 of 1950 so as to provide for leave of at least 12 weeks, in accordance with the Convention and the national social security legislation.

Article 3, paragraph 4. The Government states in its report that it has taken note of the Committee's comments. The Committee therefore hopes that the next report will contain information on the measures which have been taken or are envisaged to include in the General Labour Act, the Social Security Code and the legislation respecting public servants and public employees, a provision allowing for the extension of pre-natal leave where confinement takes place later than the presumed date, without any reduction in the minimum post-natal leave period of six weeks prescribed by the Convention.

Article 4, paragraphs 5 and 8. The Committee once again hopes that, in accordance with the assurances given by the Government in its report, the necessary measures will be taken in the near future to enable women workers who cannot claim entitlement to the benefits provided through the social security scheme to receive appropriate benefits either out of public funds or through public assistance schemes.

Article 5. In reply to the Committee's previous comments, the Government states that, in accordance with the Social Security Code, women working in both the public and private sectors are entitled during the year following confinement to nursing breaks of half an hour in both the morning and the afternoon.

In this connection, the Committee notes that as regards the legal texts which are available to it, only section 61 of the General Labour Act, which is not applicable to public servants or public employees, contains a provision concerning nursing breaks. The Committee therefore hopes that the necessary measures will be taken to give effect to this provision of the Convention as regards this category of women workers.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Brazil (ratification: 1965)

In reply to the Committee's previous comments, the Government states in its report that the supplementary Act regulating under article 7.1 of the Constitution, which guarantees protection of workers against dismissal in an arbitrary manner or without valid grounds, will comply with the provisions of *Article 6 of the Convention*. It adds that while the legislation guarantees stability of employment for a woman worker during her pregnancy and a period of five months after confinement, it does not prohibit nature of dismissal during this period. In addition, the dismissed woman worker continues to receive her remuneration and other advantages throughout the said period.

The Committee notes this information. It is bound to express once again the hope that the above-mentioned supplementary Act will be adopted very shortly and will, in application of article 7-XVIII of the Constitution and in compliance with *Article 6 of the Convention*, explicitly prohibit dismissal of a woman worker during her maternity leave or giving her notice of dismissal at such a time that the notice would expire during such absence. The Committee recalls that an explicit provision to this effect appears all the more necessary since, in a ruling dated 28 June 1989, the Higher Labour Court considered, in a case of dismissal during maternity leave, that the protection set out in article 7-XVIII of the Constitution could not be invoked in the absence of regulations which have to be adopted by the National Congress.

[The Government is requested to supply a detailed report in 1999.]

Chile (ratification: 1994)

The Committee notes the information provided by the Government in its first report. It draws the attention of the Government and requests it to supply additional information on the following points.

Article 4, paragraph 3. As the Committee had occasion to emphasize within the framework of the application of Convention No. 3, section 30, paragraphs 2 and 4, of Act No. 18.469 of 1985 fixing state participation in the cost of medical care during confinement for beneficiaries whose income exceeds a certain amount (categories C and D) at a minimum of 75 per cent, does not enable this provision of the Convention to be fully applied. The Committee recalls that the Convention guarantees *ipso jure*, for all women within its scope fulfilling the required conditions, free medical benefits including prenatal, *confinement* and postnatal care. Consequently, the Committee hopes that the Government will take the necessary measures to increase state participation in the cost of medical care during confinement for women belonging to categories C and D to 100 per cent.

In addition, the Committee would be grateful if the Government would indicate the extent to which a doctor and a medical establishment may be freely chosen, taking into account the provisions of section 11, paragraph 3, of Act No. 18.469 referred to above.

Article 4, paragraph 5. Please indicate the measures taken or envisaged to ensure the application of this provision of the Convention for women who, since they do not fulfil the condition of affiliation of six months and of three months of contributions during the prescribed period, are not entitled to financial benefits (section 4 of DFL No. 44 of 1978). In particular, the Committee would be grateful if the Government would specify the rates of all assistance benefits which may be paid to them and the relevant legislative provisions.

Cuba (ratification: 1954)

The Committee notes the Government's explanations concerning changes in the legislation on maternity protection for women workers. The Government considers that granting interruptions of work of one hour or two half-hours for the purpose of nursing did not attain its objective and, initially, extended post-natal leave to three months and gave mothers the opportunity of taking unpaid leave until the child was one year old. Subsequently, noting the large number of women who return to work immediately after the three months' post-natal leave, the Government decided to grant women wishing to take care of their children and not return to work an allowance amounting to 60 per cent of their average wage until their children are six months old (resolution No. 10/91). The Government therefore considers that all the legislative provisions ensuring maternity protection for women workers should be taken into account in the Committee's analysis.

The Committee recalls that it previously noted with interest resolution No. 10/91 allowing women to chose to take care of their children after their post-natal leave and to receive an allowance. It must, nevertheless, draw the Government's attention once again to the situation of women who, for personal reasons, wish to resume their jobs on expiry of post-natal leave. It recalls that, pursuant to ***Article 5 of the Convention***, these women shall be entitled to interrupt their work for the purpose of nursing their children and that these interruptions are to be counted as working hours and remunerated accordingly. **The Committee trusts that, in the near future, the Government will take the necessary measures to give full effect to this provision of the Convention and will indicate in its next report the progress made in this respect.**

Guatemala (ratification: 1989)

The Committee takes note of the information provided by the Government in its report. It notes however that it replies only partially to its previous comments. The Committee is therefore once again obliged to raise the points in question in a new request addressed directly to the Government concerning the following Articles of the Convention: *Article 1* (extension of coverage under the social security scheme), *Article 3, paragraphs 2 and 3* (compulsory nature of postnatal leave), *Article 4, paragraph 1* (suspension of benefit in case of the pronounced anti-social conduct), *Article 4, paragraphs 4, 5 and 8* (prohibition of making employers individually liable for the cost of maternity benefit and assistance to women who fail to qualify for benefits as of right), *Article 6* (prohibition of dismissal during maternity leave).

[The Government is asked to report in detail in 1999.]

Italy (ratification: 1971)

Article 6 of the Convention. In response to the Committee's previous comments, the Government indicates that under section 25 of the new collective agreement on domestic work of 16 July 1996, domestic women workers cannot be dismissed during the period from the date of despatch of the medical certificate of pregnancy to the end of the period of compulsory leave. The Committee notes this information with interest. **It would be grateful if the Government would provide a copy of the new collective agreement. However, it reminds the Government of the need to amend Act No. 1204 of 1971 — as indeed it had stated it would in its previous reports — with a view to applying to domestic women workers the provisions of section 2 of this Act concerning protection against dismissal, since the provisions of the 1996 collective agreement would not be applicable *erga omnes*.**

Libyan Arab Jamahiriya (ratification: 1975)

The Committee notes that the Government's report has not been received. It hopes that the next report will include full information on the matters raised previously by the Committee as regards the following Articles.

Article 1 of the Convention (Scope). In its previous comments, the Committee noted that under section 1 of the Labour Code, the scope of the Code and, consequently, the provisions of the Code restricting maternity protection, do not extend to the following workers, who are nevertheless covered by the Convention: domestic workers and persons in similar categories, women engaged in stock raising and agriculture (except those who work in enterprises processing agricultural products or repairing machinery necessary for agriculture), and permanent or temporary public officials working in state administrations and public bodies. The Committee also noted that some of these categories of women workers will be covered by special regulations. The Committee asks the Government to supply copies of such regulations, if any, and to indicate how these workers enjoy the protection provided for by the Convention under *Article 3* (Maternity leave), *Article 5* (Nursing periods) and *Article 6* (Prohibition of dismissal).

Article 2. Under section 5 of the Registration, Contributions and Inspection Regulations of 1982, registration under social security for non-Libyan officials is on a voluntary basis unless there is an agreement concluded with the country of which these workers are nationals. Please indicate the number of non-Libyan female officials and the number of them who are registered under social security, if any.

Article 3, paragraphs 2, 3 and 4 (Length of maternity leave). In answer to the Committee's previous comments, the Government indicates that section 43 of the Labour Code of 1970, which provides for a total of 50 days' prenatal and postnatal maternity leave, is to be considered as having been implicitly repealed following the adoption of section 25 of the 1980 Social Security Act, under which women workers are entitled to maternity benefit for a period of three months. The Committee notes this statement. Since section 25 of the Social Security Act concerns the payment of benefits to women workers in the event of the birth of a child, and not the maternity leave itself which is dealt with in section 43 of the Labour Code, the Committee trusts that the Government will have no difficulties in amending above-mentioned section 43 in order to bring it into conformity with the provisions of the Social Security Act and *Article 3 of the Convention*, which provides for a minimum of 12 weeks' maternity leave, of which six weeks at least must be taken after confinement. The Committee recalls in this connection that, in its previous report, the Government stated that the tripartite committee established under the decision of the secretary of the Public Service People's Committee recommended to the General People's Committee that, in particular, section 43 of the Labour Code should be amended to bring it into conformity with *Article 3 of the Convention*. It hopes that, in making the above amendment, the Government will also take the following points into consideration:

(a) the Committee recalls that section 43 of the Labour Code makes the granting of maternity leave conditional upon the completion of a qualifying period of six consecutive months of service with an employer, which is contrary to the Convention. In its last report, the Government indicates that under section 25 of the Social Security Act, the implementing regulations fix a qualifying period of four months' contributions for entitlement to maternity cash benefits. It adds that such a qualifying period is necessary to avoid abuse and that it is in conformity with Article 4, paragraph 4, of the Convention. While noting this information, the Committee wishes to point out that its comments concerned not the contribution requirements for entitlement to maternity benefit fixed by the Social Security Act, but the six months' qualifying period provided for in section 43 of the Labour Code for the grant of maternity leave. Since the Convention does not allow any such requirement for entitlement to leave, the Committee hopes that it will be removed from the legislation when section 43 of the Labour Code is amended;

(b) the Committee again recalls that section 43 of the Labour Code does not provide, as does *Article 3, paragraph 4, of the Convention*, that where confinement occurs after the presumed date, prenatal leave must in all cases be extended to the actual date of the confinement, and that the period of compulsory leave to be taken after confinement shall not be reduced on that account. The Committee hopes that it will be possible in the near future to amend section 43 of the Labour Code by including a provision to this effect.

Article 4, paragraphs 1, 4 and 8 (Cash benefits). (a) In accordance with the last paragraph of section 25 of the Social Security Act (No. 13) and section 43 of the Labour Code, the maternity benefits provided for women workers, other than self-employed women workers, appear to be the responsibility of the employer. Furthermore, in its report, the Government indicates that the regulations to specify the conditions, rules and guarantees with regard to the provision of maternity benefits, inter alia, which are to be adopted, will include a provision prescribing that the social security fund will pay the benefits to insured women who are entitled to them in cases where the employer is unable to do so, and that the fund reserves the right to claim reimbursement from the employer of the amounts it has paid out, whenever possible. The Committee recalls in this connection that the Convention, in *Article 4, paragraphs 4 and 8*, provides that maternity benefits shall be provided either by means of compulsory social insurance or by means of public funds, and that in no case shall the employer be individually liable for the cost of such benefits due to women employed by him. The Committee therefore hopes that the Government will be able to re-examine the question in the light of the provisions of the Convention and that it will be able to indicate the measures taken or under consideration to ensure that full effect is given to the Convention on this point.

(b) Since section 25 of Social Security Act No. 13 of 1980 does not contain provisions on the subject, the Committee hopes that the regulations issued under the above Social Security Act will expressly provide that in the event of the extension of the length of maternity leave in the circumstances envisaged in *Article 3, paragraph 4, of the Convention* (error in the presumed date of confinement), the period during which the maternity benefit is provided will be extended for an equivalent period.

Portugal (ratification: 1985)

With reference to its previous comments, the Committee notes the information supplied in the Government's report and particularly the amendments made under Act No. 17/95 to Act No. 4/84 on maternity and paternity protection. It also notes the observations made by the General Confederation of Portuguese Workers (CGTP) and the Confederation of Portuguese Industry (CIP), sent by the Government with its report.

The Committee asks the Government to provide detailed information on the measures taken or envisaged to ensure that full effect is given to the Convention with regard to the points raised in a request addressed directly to the Government concerning *Article 3, paragraphs 2 and 3, Article 4, paragraph 5, and Article 6 of the Convention.*

Sri Lanka (ratification: 1993)

1. The Committee notes that the Government's report has not been received. The Committee hopes that the Government will not fail to send a report for examination at the Committee's next session containing detailed information in reply to the observations made by the Lanka Jathika Estate Workers' Union (LJEWU) relating to the application of the Convention to plantation workers, and in particular with regard to granting alternative maternity benefits.

2. The Committee also requests the Government to forward copies of the following communications and texts referred to in its first report:

(a) the regulations of 1946, 1957 and 1962, pertaining to the Maternity Benefits Ordinance;

(b) the Shop and Office Employees Act, No. 19 of 1954, as amended to present;

(c) Chapter XII, section 18, of the Establishment Code;

(d) the observations of the Employers' Federation of Ceylon and the Ceylon Workers' Congress which the ILO has not received.

The Committee trusts that the Government will ensure that it forwards the necessary information and documents so that the Committee is able to assess the manner in which effect is given to the provisions of the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Ghana, Guatemala, Hungary, Italy, Mongolia, Portugal.*

Convention No. 105: Abolition of Forced Labour, 1957

Afghanistan (ratification: 1963)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1(a) of the Convention.* In comments made for a number of years, the Committee has noted that prison sentences involving an obligation to perform labour may be imposed under the following provisions of the Penal Code:
>
> (a) sections 184(3), 197(1)(a) and 240 concerning, inter alia, the publication and propagation of news, information, false or self-interested statements, biased or inciting propaganda concerning internal affairs of the country which reduces the prestige and standing of the State, or for the purpose of harming public interest and goods;
>
> (b) sections 221(1), (4) and (5) concerning a person who creates, establishes, organizes or administers an organization under the name of a party, society, union or group with the aim of disturbing and nullifying one of the basic and accepted national values in the political, social, economic or cultural spheres of the State, or makes propaganda for its extension or attraction to it, by whatever means it may be, or who joins such an organization or establishes relations, himself or through someone else with such an organization or one of its branches.
>
> The Committee had noted the Government's earlier indication that the obligation to perform prison labour provided for under section 3 of the Prisons Law covers persons convicted under the above-mentioned sections of the Penal Code as well as those convicted of other misdemeanours and crimes; under section 13 of the Prisons Law, those convicted under the above-mentioned sections of the Penal Code are kept in custody separately from ordinary prisoners, and are also engaged in different activities to keep themselves physically healthy and to provide themselves with gainful employment for which they are fully paid.
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> While noting the special status given to prisoners convicted under the above-mentioned sections of the Penal Code, the Committee pointed out that the imposition of sanctions involving compulsory labour on these persons remains contrary to the Convention.
>
> The Committee hopes that the penal provisions will be examined in the light of the Convention with a view to ensuring that no sanctions involving forced or compulsory labour may be imposed as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system and that the Government will indicate the measures taken to this end.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Algeria (ratification: 1969)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1(a) of the Convention.* In comments it has been making for many years, the Committee has referred to the provisions concerning the right of association, under which sentences of imprisonment involving compulsory labour may be imposed in circumstances covered by the Convention.
>
> The Committee noted that under section 5 of Act No. 90-31 concerning associations, any association whose objectives are contrary to the established institutional system, the public order, morals or existing laws or regulations shall be legally non-existent and, under section 45 of the same Act, any person who directs, administers or agitates in an association that is not recognized or that has been suspended or dissolved, or who facilitates the meetings of members of an association that is not recognized or has been suspended or dissolved, shall be punished by a penalty of imprisonment of from three months to two years.
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> The Committee observed that sections 2 and 3 of the Interministerial Order of 26 June 1983 prescribing the procedure for the utilization of prison labour by the National Agency for Educational Work, provide that, unless exempted on medical grounds, convicted prisoners (without distinction as to the nature of the conviction) shall be required to perform useful work as part of their re-education, training and social development.
>
> The Committee observes that, despite the adoption of new legislation on associations, the discrepancies between the national legislation and the Convention, to which the Committee has been referring for several years, have not been eliminated.
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> The Committee recalls once again that the Convention prohibits the use of any form of forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.
>
> The Committee also recalls that the protection afforded by the Convention is not confined to activities expressing or manifesting divergent opinions in the framework of established principles. Consequently, if certain activities are aimed at making fundamental changes in the institutions of the State, this does not constitute a reason for considering that such activities are outside the protection afforded by the Convention, provided that they do not involve the use of, or incitement to, violent efforts to bring about that result.
>
> The Committee has requested the Government on several occasions to take the necessary steps to ensure observance of the Convention either by lifting the restrictions on the right of association or by exempting from prison labour persons who are sentenced for breach of the laws on associations or, more generally, for political offences, and who have not committed acts of violence.
>
> The Committee has noted from the information in the Government's report that work was in progress at the Ministry of Justice to harmonize the above-mentioned Interministerial Order of 26 June 1983 with international Conventions. It notes that according to the Government's latest report the amendment procedure is not yet complete. The Committee trusts that the necessary measures will be adopted in the near future to ensure observance of the Convention and asks the Government to report on progress in this matter.
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> The Committee also asks the Government to provide information on the practical effect given to sections 3, 5, 6 and 36 of Act No. 89-11 and sections 5 and 45 of Act No. 90-31, particularly with regard to convictions handed down under these provisions, and to provide copies of the corresponding court decisions.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Bangladesh (ratification: 1972)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *Article 1(c) and (d) of the Convention.* In its previous comments, the Committee observed that under sections 101 and 102 of the Merchant Shipping Act, 1923, seamen could be forcibly conveyed on board ship to perform their duties, and under sections 100 and 103(ii), (iii) and (v) various disciplinary offences by seamen, concerning cases where life, health or safety are not endangered, were punishable with imprisonment which may involve an obligation to work. The Committee noted that the Bangladesh Merchant Shipping Ordinance, 1983, which has repealed the 1923 Act, again provided in sections 198 and 199 for the forcible conveyance of seamen on board ship to perform their duties, and in sections 196, 197 and 200(iii), (iv), (v) and (vi) for the punishment, with imprisonment that may involve an obligation to work, of various disciplinary offences in cases where life, safety or health are not endangered.
>
> The Committee requested the Government to review the Ordinance adopted in 1983 and to indicate the measures taken or contemplated to bring it into conformity with the Convention. In its latest report, the Government indicates that the Ordinance is under process for further amendment and a copy would be sent as and when it is amended.
>
> The Committee hopes that the amendment takes the above-mentioned points into consideration and that the Government will soon be in a position to indicate that the necessary action has been taken to bring the Ordinance into conformity with the Convention.
>
> 2. A certain number of other legislative texts which call for comment under *Article 1(a), (c) and (d)* of the Convention are again dealt with in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Belgium (ratification: 1961)

Article 1(c) of the Convention. In the comments it has been making for many years, the Committee has requested the Government to take measures to amend or repeal sections 10, 22, 25(1) and (2), 26(1), 27 and 28 of the Disciplinary and Penal Code for the Merchant Marine and the Fishing Fleet under which seamen guilty of certain breaches of labour discipline are liable to imprisonment involving, under section 30bis of the Penal Code, the obligation to work. The Committee notes that section 30bis has become 30ter (Act of 10 July 1996, abolishing the death penalty and modifying criminal sanctions).

In its latest reports, the Government indicated that a Bill amending sections 10, 22 and 25 has been sent to the Ministry of Justice for approval before transmission to the Council of State. Sections 26, 27 and 28 are nevertheless considered to be not breaches of discipline but offences endangering the safety of the vessel and there is no intention to amend them.

The Committee notes with interest the progress of the Bill concerning sections 10, 22 and 25.

The Committee noted that under section 26(1) any crewman refusing outright to obey orders for the handling of the vessel or the maintenance of good order is liable to imprisonment of between eight days and six months (sections 27 and 28 prescribe severer penalties in the case of officers or crewmen acting collectively; for officers, the sanction provided is over five years' imprisonment and for others, imprisonment of between one and five years). The Committee emphasized that section 26(2) of the same section does not fall within the scope of the Convention since it refers specifically to orders given for the safety of the vessel, the persons on board or the cargo; subsection (1), conversely, refers to failure to obey orders for the handling of the vessel which, in certain cases, may not jeopardize the safety of the vessel (such as manoeuvres for changing course on the high seas). The Committee refers once again to the explanations it gave in paragraphs 117-119 of its 1979 General Survey on the abolition of forced labour, in which it states that the Convention does not cover sanctions relating to acts tending to endanger the ship or the life or health of persons on board, unlike sanctions relating more generally to breaches of labour discipline, such as disobedience. The conduct sanctioned in section 26(1) does not seem to comply with the criterion of safety of the vessel or persons on board necessary to place it outside the scope of the Convention.

The Committee requests the Government to re-examine sections 26(1), 27 and 28 of the Disciplinary and Penal Code for the Merchant Marine and the Fishing Fleet with a view to restricting their application to cases in which the safety of the vessel and the persons on board is placed in danger and to supply information on their application in practice.

Cameroon (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. In earlier comments the Committee referred to the provisions of sections 113 and 157 (new) of the Penal Code under which "whoever by any means whatsoever incites to the obstruction of the execution of any law, regulation or lawful order of the public authority is liable to imprisonment for from three months to four years" (157); "whoever professes or propagates false information liable to injure public authorities or national unity is liable to imprisonment for from three months to three years" (113). Under section 154(2) "whoever, whether in speech or in writing intended for the public, incites to revolt against the Government and the Institutions of the Republic shall be punished with imprisonment for from three months to three years".
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> The Committee noted that section 18 (new) of the Penal Code (Act No. 90-61 of 19 November 1990) no longer refers to the penalty of detention (a penalty depriving someone of his freedom for a political crime or lesser offence during which convicts were not required to work) and that imprisonment with compulsory labour had replaced detention.
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> The Committee notes that in its report the Government indicates that section 157 of the Penal Code punishes any disturbance of the public order.
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> The Committee observes that, under the provisions of section 113, 154(2) and 157, penalties of imprisonment with compulsory labour under section 24 of the Penal Code may be imposed on persons who express certain political opinions or demonstrate their ideological opposition to the established political, social or economic order. It also notes that section 111 of the same Penal Code allows a penalty of life imprisonment to be imposed on "whoever attempts, in time of peace, by whatever means, to undermine the integrity of the territory" and that section 116 allows a penalty of imprisonment of from 10 to 20 years to be imposed on "whoever provokes or facilitates, during an insurrectionary movement, the assembling of the insurgents by whatever means (a); prevents by whatever means the convening, meeting or exercise of the authority responsible for public order or takes over such authority (b); appropriates public or private buildings (c)".
>
> The Committee notes that under section 12 of Act No. 90-53 concerning freedom of association, associations may be dissolved by judicial decision on the initiative of the Legal Department or at the request of any interested party in case of nullity as provided for under section 4 of the same Act. Section 4 declares null and void associations founded in support of a cause or in view of a purpose contrary to the Constitution, and associations whose purpose is to undermine, especially security, the integrity of the national territory, national unity, national integration or the republican character of the State. Section 14 of the same Act

provides that "the dissolution of an association shall not bar any legal proceedings which may be instituted against the officials of such association" and section 33 provides for imprisonment for from three months to one year for the board members or founders of an association which continues operations or which is re-established illegally after a judgement or decision has been issued for its dissolution. The same penalties apply to anyone who encourages meetings of members of a dissolved association by allowing them the use of his premises (section 34).

The Committee recalls that, as indicated in paragraphs 102 to 109 of its General Survey of 1979 on the abolition of forced labour, States which have ratified the Convention must abolish all forms of forced labour, including labour imposed as a consequence of a conviction in a court of law, in the cases provided for in the Convention.

The Committee also recalls that the protection provided by the Convention is not limited to activities expressing or demonstrating dissent within the framework of established principles. Consequently, the fact that some activities aim to bring about fundamental changes in the institutions of the State does not afford grounds for considering them to be outside the scope of the Convention, provided that violent methods are not used or advocated in the pursuit of the objective sought.

The Committee asks the Government to indicate the measures taken or envisaged to ensure that, in accordance with *Article 1(a) of the Convention*, the persons protected by the Convention, particularly as regards the expression of opinions in the press, political activities, and the right of association and assembly, may not be subjected to penalties involving compulsory labour. It also asks the Government to provide all information relevant to the application in practice of the above-mentioned provisions, including the number of convictions for violations of them, and copies of any judicial decisions which define or illustrate their scope.

2. In the comments it has been making for many years, the Committee has noted that under sections 226, 229, 242, 259 and 261 of the Merchant Shipping Code (Ordinance No. 62/DF/30 of 1962), certain breaches of discipline committed by seamen may be punished by imprisonment involving the obligation to work.

The Government had stated that studies were being conducted with a view to revising the Merchant Shipping Code and harmonizing national legislation and practice with the provisions of the Convention.

The Committee asks the Government to indicate the outcome of these studies, report on the progress made in revising the Merchant Shipping Code and supply information on the measures taken or contemplated to ensure that penalties of imprisonment involving compulsory labour may not be imposed on seamen for breaches of discipline that do not endanger the vessel or human life or health.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Canada (ratification: 1959)

The Committee notes the Government's report of 1997.

Article 1(c) and (d) of the Convention. In previous comments the Committee referred to section 247(1)(b), (c) and (e) of the Canada Shipping Act, under which penalties of imprisonment involving compulsory labour may be imposed for breaches of discipline that do not endanger the safety of the ship or the life or health of persons. The Committee notes with interest from the Government's report of 1997 that consultations with concerned parties were to take place in September 1997 and that the amendments were expected to be adopted in the spring of 1999.

Chad (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In the comments that it has been making since 1978, the Committee has referred to the provisions of Ordinance No. 30/CSM of 26 November 1975, and to Act No. 15 of 13 December 1959, under which any person who has participated in a strike is punishable by imprisonment involving forced labour, as well as Act No. 35 of 8 January 1960 respecting subversive texts. The Committee once again notes the Government's indications in its report that the competent ministries have again been requested to repeal or amend the texts that are contrary to the Convention.
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> The Committee hopes that the Government will report the measures adopted for this purpose in the very near future.
>
> The Committee notes the adoption of the Decree of 1 May 1994 respecting the right to strike and the settlement of collective disputes. It requests the Government to provide a copy of the above Decree.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Cyprus (ratification: 1960)

Article 1(c) and (d) of the Convention. In the comments that it has been making for a number of years, the Committee has noted that section 3(1) of the Supplies and Services (Transitional Powers) (Continuation) Act (Chapter 175A) authorizes recourse to the provisions of Defence Regulations 79A and 79B for the purpose of maintaining, controlling and regulating supplies and services and, in particular, to secure their equitable distribution or their availability at fair prices, to promote the productivity of industry, commerce and agriculture, to foster and direct exports and reduce imports, to redress the balance of trade, and to ensure that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community. Defence Regulation 79A gives authority to direct any person to perform services for any of these purposes and to require persons employed in undertakings engaged in work essential for any such purpose, not to terminate their employment or absent themselves from work or to arrive persistently late for work, on pain of imprisonment (involving, under the Prison Regulations, the obligation to perform labour). Regulation 79B authorizes the Government to issue regulations to prohibit strikes on pain of imprisonment, by virtue of the provisions of Regulation 94.

The Committee has noted the Government's repeated statements in its reports, that during the period under review no recourse was had to Defence Regulations 79A and 79B, which, however, can only be applied to the extent that they are not in conflict with the Constitution of the Republic of Cyprus and namely articles 10 and 27 concerning forced labour and the right to strike respectively. Nevertheless, the Government had proceeded with the drafting of new legislation regulating the right to strike in essential services, which, according to the latest report of the Government, is still being examined by the Committee of Ministers (Minister of Justice and Public Order, Minister of Finance, Minister of Labour and Social Insurance and Minister of Commerce, Industry and Tourism). The Government adds that every effort will be made to bring the legislation into conformity with the Convention.

The Committee had noted from the version of the draft legislation that according to the Table (Schedule) of the Act, referred to in section 3(2) of the draft, prescribed essential services are all services or undertakings or works necessary for the operation of

11 activities listed therein. While most of these may be considered as essential services in the strict sense of the term, others, namely the control, processing and trading of fuel, the security of the supply of telecommunications and radio-telecommunications and the unhampered operation of air transport (as distinct from the safe operation of airports and air traffic control) are not among the services whose interruption is likely to endanger the life, personal safety or health of the population. As regards the operation of ports, not normally included in the range of strictly essential services, its inclusion appears acceptable in view of the fact that Cyprus is an island.

The Committee hopes that the list finally adopted will be limited to essential services in the strict sense of the term, and that participation in strikes will not be punishable with penalties involving compulsory labour, except where it is likely to endanger the life, personal safety or health of persons. The Committee asks the Government to report on progress made and to provide a copy of the new provisions as soon as they have been adopted.

Dominican Republic (ratification: 1958)

The Committee notes the Government's report and the comments on the application of the Convention submitted by the National Trade Union of Agricultural Workers of Sugar and Similar Plantations (SINATRAPLASI), the Trade Union of Cane-Cutters of the Barahona Plantation (SIPICAIBA) and the Union of Agricultural and Similar Plantations' Workers of the Ingenio Barahona (SITRAPLASIB), which were received in a communication of October 1996 a copy of which was sent to the Government in November 1996. The Government sent its comments on the questions raised in a communication received in June 1997. The Committee also notes the report on the matters raised by the above organizations prepared by the Director of the State Sugar Board (CEA).

Issues arising from the situation of Haitian workers in the Dominican Republic, related to the application of the Conventions on forced labour

The above-mentioned organizations submit (in a single document) that the amendments to the legislation, particularly the Labour Code and the various programmes announced by the Government, have led to no significant improvement in the conditions of Haitian workers employed on sugar plantations in the Dominican Republic. They allege that workers assigned to a plantation are not allowed to leave it before the harvest and that those who refuse to obey are brought to order by the plantations' armed guards or soldiers who constantly oversee cane-cutting. In addition, workers who have been living for many years on the plantations are threatened with expulsion if they refuse to work.

The above organizations also allege that only few workers have signed individual work contracts and that, although contracts written in Creole have been introduced, they are unintelligible.

The organizations note, however, that as part of the reform introduced by Decree No. 417/90, the Ministry of Labour has set up delegations for the purpose of ensuring compliance with the terms of the work contract and that plantation overseers have been dismissed for misconduct.

As for the regularization of the situation of Haitian workers living and working in the Dominican Republic, the organizations allege that following the steps taken by the National Migration Directorate to "register" the Haitian population in 1990, the only result has been the expulsions ordered in 1991, and also the expulsion of Haitians who had obtained the temporary work permit authorized by Decree No. 417/90 on expiry of the permit.

In conclusion, the above-mentioned organizations consider that the measures taken are largely ineffective, the more so as they apply only to workers hired since 1991 and exclude the larger group of resident workers who are totally uncertain as to their legal situation.

The Committee notes the Government's comments on these allegations. According to the Government "workers hired for cane-cutting enjoy full freedom of movement, since drastic measures were taken against former practices and that today it would be difficult to assert that such practices are common". The Committee notes that in the report which the Director of the CEA prepared on the issues raised by the trade union organizations, it is stated that, "cooperation from military staff has been confined to escorting convoys of day labourers to and fro between Santo Domingo and Haiti and that in such cases the staff involved speak Creole and wear civilian dress".

The Government indicates that for the sugar harvest which began in November 1996 care was taken to inform the "cutters" about the conditions in which they would perform the tasks of cutting, lifting and transporting cane. The Government indicates that there is full freedom of movement but that a worker who abandons the job for which he was hired is repatriated and that every temporary worker is given a contract drawn up in Spanish and Creole, under supervision of a labour inspector. The Committee notes the contracts in Spanish and Creole sent by the Government.

With regard to the regularization of the status of Haitian workers who have been living and working in the country for some time, the Government states that for the 1996 harvest temporary residence cards were issued for the duration of the harvest to 13,350 Haitians hired by the CEA and that the Migration Directorate has started a procedure for issuing residence cards, permanent or temporary as needed. The Government adds that, with cooperation from the International Migration Organization (IMO) work is under way on the drafting of a new law on migration (a copy of which was sent by the Government) and that IMO technical cooperation has also been obtained for defining and developing a labour migration division in the Ministry of Labour. A joint bilateral committee made up of representatives of both States has been set up to examine the various aspects of Dominican-Haitian relations.

The Committee notes that, with regard to the regularization of the status of Haitians working and living in the Dominican Republic, the information supplied by the Government indicates that the measures are at an early stage, despite the fact that for many years the Committee has been pointing out that the application of the Convention is affected by the uncertainty of the legal status of many workers, since such uncertainty makes the workers more vulnerable and may lead to abuses and practices which impair the rights protected by the Convention.

The Committee hopes that the Government will give effect to the recommendations which it has been making for some time concerning the regularization of the status of Haitian workers living and working in the Dominican Republic and that it will report on any progress made.

The Committee asks the Government to provide information in its next report on the work of the joint bilateral committee as regards the conditions for the hiring of Haitian workers for the cane harvest.

Ecuador (ratification: 1962)

For many years, the Committee has been making comments referring to Decree No. 105 of 7 June 1967, under which penalties of imprisonment of from two to five years can be imposed on anyone who foments or takes a leading part in a collective works stoppage. The penalty laid down in the Decree for anyone who participates in such a stoppage, without formenting or taking a leading part in it, is correctional imprisonment of from three months to one year. For the purposes of this provision, there is a work stoppage when there is collective stoppage of work or the imposition of a lock out except in the cases allowed by the law, the paralysing of means of communication and similar antisocial acts. Prison sentences involve compulsory labour by virtue of sections 55 and 66 of the Penal Code.

The Committee also referred to section 65 of the Maritime Police Code, under which crew members of an Ecuadorian vessel may not apply to disembark in a port other than the port of embarkation, except with the agreement of the master. It also provides that if a crew member deserts, he shall forfeit his pay and belongings to the vessel and that if he is captured he shall pay the cost of his arrest and be punished in accordance with the naval regulations in force.

The Committee noted that several draft decrees had been prepared with the assistance of representatives of the Director General of the ILO in 1989, under which Legislative Decree No. 105 would be interpreted as being inapplicable to strikes or collective labour disputes; section 165 of the Maritime Police Code would be repealed, and section 22 of the Code on the Application of Sentences and Social Rehabilitation must be interpreted in the sense that the work of convicted persons in detention and re-education centres would have to be voluntary. In 1991, the Committee noted that the Minister of Labour and Human Resources submitted the above-mentioned draft texts to the President of the National Congress with a view to their inclusion on the agenda of the Congress. Subsequently (in 1992 and 1995) the Committee noted that the drafts had not been adopted and stressed that the Government should take the necessary measures to align national legislation with the Convention.

The Committee has taken note of the report of the ILO technical assistance mission which visited Ecuador from 4 to 10 September 1997, and of the preliminary draft bill amending the Labour Code prepared during the mission, of which the final section provides for repeal of Decree No. 105.

The Committee notes that the Government's report, received on 6 November 1997, contains no reference to this preliminary draft bill. It also notes that the report contains no information on the situation in regard to section 65 of the Maritime Police Code.

The Committee hopes that the Government will take the necessary measures without delay to ensure application of *Article 1(c) and (d) of the Convention*.

Gabon (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1(c) and (d) of the Convention.* In the comments that it has been making for many years, the Committee has noted that under section 153, subsections 1, 4, 5 and 9 (read in conjunction with section 156), and sections 169, 186 and 188 of the Merchant Shipping Code (Act No. 10/63 of 12 January 1963) certain breaches of discipline by seafarers are punishable by imprisonment involving compulsory labour by virtue of Act No. 22/84 of 29 December 1984 regulating prison labour.

> The Committee notes once again the Government's repeated statement in its report to the effect that the Merchant Shipping Code is currently being revised and that the Committee's comments will be taken into account. The Committee once again hopes that the draft texts that are under examination will ensure that sentences of imprisonment involving compulsory labour cannot be inflicted on seafarers for breaches of discipline that do not endanger the safety of the vessel or of persons, and that the Government will soon report that the legislation has been thus amended.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Iraq (ratification: 1959)

1. *Prison labour*. In its earlier comments, the Committee has noted that section 87 of the Penal Code requires convicted persons "to perform the work prescribed by law in penal institutions". It has also noted that Act No. 104 of 1981 on State Organization for Social Reform, which governs work for prisoners, does not distinguish between political and other prisoners. The Government has reiterated in its last report that prisoners are allowed to work, but are not obliged to do so, and that in fact there is not enough work for all the prisoners who desire to work. The Government has also provided information on conditions of work, as laid down in section 20 of the same Act (as amended by Act No. 8 of 1986), which it indicates approach those of work outside prisons. The Government has not referred again to its earlier expressed intention to amend the Penal Code to remove any lingering doubts in this respect.

2. The Committee notes the information provided by the Government, and requests it to indicate what measures it contemplates to bring the legislation into line with its indications of the practice followed. The Committee also requests the Government to provide an updated copy of the legislation in force in this area.

3. *Article 1(c) and (d)*. The Committee noted in its previous comments that, under sections 197(i) and (iv) of the Penal Code, imprisonment (with an obligation to work) may be imposed when activities are stopped or gravely hampered in government departments and offices, public utilities and organizations and associations considered to be in the public interest, or in industrial installations, including oil installations, electric power stations, water installations and means of communication. The Government has indicated in earlier reports that state officials have no right to strike, and that section 197(iv) was applied without qualification and made no distinction between essential and non-essential services; the threat of imprisonment for disruption of work was intended to induce continuation of work. The Committee also referred to section 364 of the Penal Code, which prescribed imprisonment (with an obligation to work) in cases where officials or persons with public functions leave their work even after resignation or do not carry out their work when this might endanger the life, health or safety of the population or causes riots or unrest, or a stoppage in public utilities. It also noted that, under resolution No. 150 of 1987 of the Revolutionary Command Council (RCC), all workers in state service and the socialist sector are public officials. Finally, the Committee noted severe restrictions on the resignation of public officials under RCC resolution No. 700 of 13 May 1980.

4. The Committee again takes note of these severe restrictions on the right of public officials to strike, or to leave their posts, under threat of imprisonment involving compulsory labour. It recalls that it has stated in paragraphs 122 to 132 of the 1979 General Survey on the abolition of forced labour that restrictions on the right of public servants to strike can be imposed but that they are compatible with the Convention only

if the interruption of the services concerned would endanger the existence or well-being of the whole or part of the population.

5. The Committee recalls that, in its 1993 report, the Government indicated that measures had been taken to amend sections 197(iv) and 364 of the Penal Code. It requests the Government to provide detailed information on the legislation now in force in this regard, and on its application in practice. It also requests it to repeal or modify any legislation which remains contrary to the requirements of the present Convention.

Liberia (ratification: 1962)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *Article 1(a) of the Convention.* The Committee noted the entry into force on 6 January 1986 of the new Constitution which guarantees fundamental rights, in particular the right to freedom of expression (article 15), the right to assemble and to associate (article 17), and provides for the free establishment of political parties, subject to their being registered (articles 77 and 79). The Committee noted that under article 95 of the new Constitution any enactment or rule of law in existence immediately before the coming into force of the Constitution, whether derived from the abrogated Constitution or from any other source shall, in so far as it is not inconsistent with any provision of the new Constitution, continue in force as if enacted, issued or made under the authority of the Constitution. The Committee referred to its previous comments in which it observed that prison sentences (involving, under Chapter 34, section 34-14, paragraph 1, of the Liberian Code of Laws, an obligation to work) might be imposed in circumstances falling within Article 1(a) of the Convention under section 52(1)(b) of the Penal Law (punishing certain forms of criticism of the Government) and section 216 of the Election Law (punishing participation in activities that seek to continue or revive certain political parties). The Committee requested the Government to state whether the above provisions continue in force and, if so, to indicate the measures taken or contemplated with a view to their repeal. The Committee also requested the Government to provide a copy of the Decree No. 88A of 1985 relating to criticism of the Government.
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> 2. *Article 1(c) and (d).* In earlier comments the Committee also referred to various provisions of the Maritime Law punishing breaches of labour discipline and of Decree No. 12 of 30 June 1980 prohibiting strikes. In the absence of a reply, the Committee again addressed a direct request on these matters to the Government.
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> 3. In its previous comments concerning Decree No. 12 of 30 June 1980 prohibiting strikes, the Committee noted the Government's statement in its report for 1982-83 that no penalty had been imposed for violation of the Decree and the statement by a Government representative to the Conference Committee in 1984 during the discussion of Convention No. 87 that the ban on strikes was due to be lifted on 26 July 1984.
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> The Committee observed that the Government's report contained no information in this regard. The Committee noted however from the conclusions adopted by the Committee on Freedom of Association concerning Case No. 1219 (in particular the 241st Report of that Committee) that the ban on strikes had not yet been lifted. The Committee requested the Government to provide information on any measures adopted or envisaged in this matter.

The Committee hopes that the Government will make every effort to take the neessary action in the very near future.

Libyan Arab Jamahiriya (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *Article 1(a), (c) and (d) of the Convention.* In the comments it has been making for a number of years, the Committee has referred to various provisions of the Publications

Act of 1972, under which persons expressing certain political views or views ideologically opposed to the established political, social or economic system may be punished with penalties of imprisonment (involving, under section 24(1) of the Penal Code, an obligation to perform labour). The Committee also referred to sections 237 and 238 of the Penal Code, under which penalties of imprisonment (involving compulsory labour) may be imposed on public servants or employees of public institutions as a punishment for breaches of labour discipline or for participation in strikes, even in services the interruption of which would not endanger the life, personal safety or health of the whole or part of the population.

In its earlier comments the Committee noted the information supplied by the Government to the effect that Act No. 5 of 1991 on the application of the principles of the Green Book on Human Rights, and Act No. 20 of 1991 on the promotion of freedom, proclaim the right of each citizen to express his opinion, that part 2 of the Green Book prohibits penalties such as forced labour, and that the provisions of the Publications Act No. 76 of 1972 and of the Penal Code would be amended. It also noted that under section 2 of Act No. 5 of 1991, amendments must be drawn up within a period of one year.

In its latest report, received in 1995, the Government reaffirms its intention to amend the provisions of the Publications Act No. 76 of 1972, and the penal Code, referred to above, within the period of time prescribed in section 2 of Act No. 5, so as to ensure compliance with the Convention.

The Committee hopes that the amendments will now be made and that they will ensure that no penalties involving compulsory labour may be imposed as a punishment on persons who have expressed certain political or ideological opinions or who have committed breaches of labour disciplines or participated in strikes.

The Committee hopes that the Government will soon be in a position to supply a copy of the provisions adopted to this end.

2. In its earlier comments the Committee noted the information provided by the Government in 1992 in reply to its comments, to the effect that the Orders of the Higher Council of the Revolution of 1969, the texts of which it had been requesting, became null and void following the promulgation of Acts Nos. 5 and 20 of 1991.

The Committee noted that the text of Act No. 5 of 1991 had not been included in the list of texts transmitted by the Government and that section 35 of Act No. 20 of 1991 provides in general terms that all conflicting legislation is amended. It also noted that the Orders in question on the defence of the revolution (of 11 December 1969) and on trials for political and administration corruption (of 26 October 1969) are explicitly referred to in section 5(A)(8) of the Publications Act No. 76 of 1972. The Committee requested the Government to indicate the measures taken to formally repeal the texts in question and to transmit copies of the provisions adopted to this effect.

In the absence of a reply, the Committee again expresses the hope that the Government will supply copies of the Orders of 1969 or of any provisions repealing them, as well as copies of Act No. 5 of 1991 of the Green Book on Human Rights and the legislative texts governing the establishment, functioning and dissolution of associations and political parties.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mauritius (ratification: 1969)

1. *Article 1(c) and (d) of the Convention.* In its previous comments the Committee noted that under section 183(1)(a), (b), (c) and (e), read together with section 184(1) of the Merchant Shipping Act, No. 28 of 1986 (which entered into force on 15 January 1991 by virtue of Proclamation No. 1 of 1991), certain breaches of discipline by seamen (such as desertion, neglect or refusal to join the ship, absence without leave, neglect of duty) are punishable by imprisonment (involving an obligation to perform labour), and that under

section 183(1), (3) and (4), seamen who are not citizens of Mauritius, and who commit such offences, may be conveyed on board ship for the purpose of proceeding to sea.

Referring to paragraphs 110 to 125 of its 1979 General Survey on the abolition of forced labour, the Committee recalled that in order to be compatible with the Convention the provisions mentioned above should restrict the imposition of sanctions to breaches of labour discipline endangering the safety of the ship or the life or health of persons on board.

In its latest report, the Government indicates that the Merchant Shipping Act has not yet been amended but that it is planned to bring it into conformity with the Convention as soon as possible.

The Committee hopes that the Government will shortly be able to indicate that sections 183 and 184 of the Merchant Shipping Act have been amended, thereby ensuring compliance with the Convention on this matter.

2. *Article 1(d).* In comments it has been making for many years, the Committee has observed that under sections 82 and 83 of the Industrial Relations Act, 1973, submission of any industrial dispute to compulsory arbitration is left to the discretion of the minister. The decision handed down after such a procedure is enforceable for the parties (section 85) and any strike becomes unlawful (section 92). Finally, participation in such a prohibited strike may be punished by imprisonment (section 102) involving compulsory labour (section 35(1)(a) of the Reform Institutions Act). The Committee observed that these provisions are incompatible with *Article 1(d) of the Convention*. It pointed out that for the provisions regarding compulsory arbitration, subject to sanctions involving compulsory labour, to be compatible with the Convention, their scope should be limited to essential services in the strict meaning of the term (namely those the interruption of which would endanger the life, personal safety or health of the whole or part of the population).

For many years, the Committee has noted the Government's statement to the effect that no sanctions have been applied by virtue of the above-mentioned provisions and referring to Bills intended to modify them. In its latest report, the Government reiterates this information.

The Committee requests the Government to take the measures necessary to bring the legislation into conformity with the Convention on this matter and to provide information on the progress made in this direction.

Morocco (ratification: 1966)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1(d) of the Convention.* 1. In its previous comments concerning the penalties applicable to public servants in the event of a strike, the Committee noted that, under the terms of section 5 of Decree No. 2-57-1465 of 8 February 1958 respecting the exercise of the right to organize by public servants, "any coordinated stoppage of work, any collective act of indiscipline may be punished without regard to the guarantees respecting discipline".
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> The Committee noted the allegations of the Democratic Confederation of Labour (CDT) and the General Union of Moroccan Workers (UGTM) that the Government had recourse to the above Decree to threaten public servants and oblige them to work during strikes, and that in certain cases it had arrested teachers and health-care personnel.
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> With regard to this matter, the Committee noted the statements by the Government representative to the Conference Committee in 1992 to the effect that section 5 of Decree No.

2-57-1465 of 8 February 1958 corresponds to the principle of the continuity of the public service.

On this matter, the Committee refers to the explanations provided in paragraph 123 of its 1979 General Survey on the abolition of forced labour, in which it recalls that it is not incompatible with the Convention to impose penalties of imprisonment for participation in strikes in the civil service or other essential services, provided that such provisions are applicable only to essential services in the strict sense of the term, that is those whose interruption would endanger the existence or well-being of the whole or part of the population.

The imposition of sanctions involving compulsory prison labour breaches a general prohibition of the right to strike in the public service (section 5 of Decree No. 2-57-1465 of 8 February 1958) is incompatible with the requirements of the Convention, which prohibits the use of forced or compulsory labour, including compulsory prison labour, as a punishment for having participated in strikes.

2. The Committee has also noted the allegations made by the Moroccan Labour Union (UMT) in 1994, that the Secretary-General of the UMT officially lodged a petition with the Moroccan Government to repeal section 288 of the Penal Code, which provides that "anyone who, through violence, the use of force, threats or fraudulent activities has caused or maintained, or endeavoured to cause or maintain, a coordinated stoppage of work, with the objective of achieving by force the raising or lowering of wages, or jeopardizing the free exercise of industry or work, shall be liable to a sentence of imprisonment of from one month to two years (...)", on the grounds that it violates the freedom of work.

According to the UMT, section 288 of the Penal Code is frequently used by the courts to imprison members of the UMT on the grounds of their peaceful participation in strikes, the right to the exercise of which is nevertheless guaranteed by the Constitution. The UMT adds that the wording of section 288 is too general and that its systematic use constitutes a violation of the right to strike and a violation of the Convention, inasmuch as the Penal Code imposes compulsory labour on persons sentenced to imprisonment (section 28).

The Committee notes the information and explanations provided by the Government with regard to the constitutional guarantees of the right to strike and the freedom of work. In the observations that it has made on the matters raised by the UMT, the Government states that the annual number of strikes (356 in 1994, with the participation of 28,551 workers) and the diversity of sectors in which strikes occurred in 1995 (railways, phosphate industry and health) illustrate that the right to strike is recognized as a basic right of workers to defend their economic and social interests, but that, when exercising the right to strike, workers are bound to respect other fundamental rights, such as the freedom of work, which is also guaranteed by the Constitution.

With regard to section 288 of the Penal Code, the Government states that it constitutes a guarantee of the freedom of work and that the elements which violate this freedom are violence, threats and fraudulent activities.

The Committee notes that the matters which have been raised in the allegations made by the trade union organizations refer to the penalties imposed, which involve compulsory labour as a punishment for having participated in strikes; the penalties imposed under the terms of Decree No. 2-57-1465 of 8 February 1958 respecting the exercise of the right to organize of public officials and sections 288 (violations of the freedom of work) and 28 (compulsory labour for those sentenced to prison terms) of the Penal Code.

With regard to the imprisonment of persons who have participated in strikes, on the grounds of violations of section 288 of the Penal Code (violations of the freedom of work), the Committee notes the conclusions of the Committee on Freedom of Association in the case of the complaint against the Government of Morocco submitted by the UMT (Case No. 1724) in which the Committee recalled that "taking part in picketing and firmly but peaceably inciting other workers to keep away from their workplace cannot be considered unlawful" (*Official Bulletin*, Vol. LXXVII, 1994, Series B, No. 2, paragraph 367).

The Committee also notes the frequent imposition of sentences of imprisonment upon workers who go on strike and notes in this respect the conclusions of the Committee on

Freedom of Association in Cases Nos. 1687 and 1691 (complaints against the Government of Morocco, submitted by the UMT and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)), to the effect that "the authorities should not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association" (GB.267/7, 267th Session (November 1996), paragraph 409).

The Committee hopes that the Government will take the necessary measures as regards section 5 of Decree No. 2-57-1465 of 8 February 1958 respecting the exercise of the right to organize by public servants and section 288 of the Penal Code, to ensure that no form of forced or compulsory labour, including compulsory prison labour, is imposed in the circumstances covered by *Article 1(d) of the Convention*.

The Committee requests the Government to supply information on the effect given in practice to section 5 of Decree No. 2-57-1465 of 8 February 1958 respecting the exercise of the right to organize by public servants and section 288 of the Penal Code, including the number of convictions over the past four years for violations of these provisions, and copies of court rulings that can define or illustrate their scope.

The Committee notes article 14 of the Constitution (Dahir No. 1-92-155 of 9 October 1992, enacting the revised Constitution), under the terms of which "The right to strike remains guaranteed. An organic Act shall set out the conditions and forms under which this right may be exercised." The Committee requests the Government to indicate whether the organic Act respecting the conditions for the exercise of the right to strike envisaged under article 14 of the Constitution (right to strike) has been enacted.

The Committee notes with interest, from the Government's report, that Dahir No. 1-94-288, of 25 July 1994, repealed the Dahir of 29 July 1935 which prohibited strikes that disturbed the public order and the respect due to the state authorities.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Nigeria (ratification: 1960)

The Committee has noted the information provided by the Government in reply to its earlier comments.

Article 1(a) of the Convention. With reference to its previous observation, the Committee has noted that a transitional timetable was announced in 1995 with a view to return the country to democratically elected civilian government by 1 October 1998. It has noted that a partial lifting of the ban on political activities was announced in 1995, and that multi-party local government elections took place in March 1997. The Committee requests the Government to provide information, in its next report, concerning legislative or statutory provisions in force in relation to the expression of views, freedom of assembly and association and political activities. Please also supply information on the activities of the National Human Rights Commission which was established in 1996.

The Committee notes that the Conference Committee on the Application of Standards, in paragraph 169 of its General Report of 1997 concerning a very grave trade union situation in the country, urged the Government to ensure full respect of civil liberties, essential to the exercise of freedom of association. The Committee wishes to recall in this connection that the Convention prohibits the use of any form of forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee therefore requests the Government once again to indicate the measures taken or envisaged to ensure that the persons protected by the Convention may not be punished by penalties which would involve an obligation to work.

In its earlier comments the Committee referred to the State Security (Detention of Persons) Decree No. 2 of 1984, as amended, under which persons can be detained for successive periods of six weeks. The Committee has noted the Government's indication in its report that there is no Act or Regulation governing conditions of detention under the above-mentioned Decree. The Committee requests the Government to provide, in its next report, information on any applicable provisions concerning conditions of detention under Decree No. 2 of 1984.

Article 1(c) and (d). In its earlier comments the Committee referred to the following provisions: section 81(1)(b) and (c) of the Labour Decree, 1974, under which a court may direct fulfilment of a contract of employment and posting of security for the due performance of so much of the contract as remains unperformed, and a person failing to comply with such direction may be committed to prison; section 117(b), (c) and (e) of the Merchant Shipping Act, under which seamen are liable to imprisonment involving an obligation to work for breaches of labour discipline even in the absence of a danger to the safety of the ship or of persons; section 13(1) and (2) of the Trade Disputes Decree No. 7 of 1976, under which participation in strikes may be punished with imprisonment involving an obligation to work in certain cases.

The Committee has noted the Government's indication in its report of 1994 that all these provisions are still being considered by the National Labour Advisory Council. The Committee reiterates its hope that the necessary action to ensure the observance of the Convention in this regard will be taken in the near future and asks the Government to indicate, in its next report, the measures taken to amend the legislative provisions referred to above.

Senegal (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1(c) and (d) of the Convention.* For over ten years the Committee has been referring in its comments to sections 223 and 243 of the Merchant Shipping Code, under which seafarers may be punished for breaches of labour discipline (absence without leave, refusal to obey after formal order) with sentences of imprisonment involving compulsory labour under section 40 of the Penal Code.
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> The Committee notes that in its report the Government reiterates its previous indications that the provisions in question are currently being revised in the overall framework of the revision of the Merchant Shipping Code.
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> The Committee hopes that sections 223 and 243 of the Merchant Shipping Code will be amended in the very near future to ensure that no sentence involving the obligation to work can be imposed for breaches of labour discipline and requests the Government to indicate the progress achieved in this respect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sierra Leone (ratification: 1961)

In its earlier comments the Committee requested the Government to supply indications on the evolution of the political situation, in so far as it relates to the application of the Convention. It noted that the Constitution adopted in 1991 (Act No. 6 of 1991) which provided for the recognition and protection of fundamental human rights and freedoms, had been suspended. The Government informed the Committee in its latest report (1995) that public meetings of a political nature remained banned and that new guidelines for publications had been introduced.

The Committee notes that in July 1996 the Constitutional Reinstatement Provisions Act reinstated the suspended parts of the 1991 Constitution. It further notes the change of government in May 1997 and hopes that the Government will supply information on the developments of the political situation in the country, in so far as the application of the Convention is concerned, and in particular, the information on the application of provisions concerning the freedom of speech and press, freedom of peaceful assembly and association. The Committee also asks the Government to provide, in its next report, the information requested in its previous observation on the application in practice of sections 24, 32 and 33 of the Public Order Act (concerning public meetings, the publication of false news and seditious offences). Please also provide particulars of the outcome of work of the Constitutional Review Committee, to which the Government referred in its 1995 report.

Sudan (ratification: 1970)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1(a) and (d) of the Convention.* In its previous observations, the Committee noted that a state of emergency had been proclaimed in 1989 which extended the previous state of emergency, that the provisional Constitution of 1985 had been suspended and that persons convicted of offences against the regulations to give effect to the state of emergency of 1989 were subject, inter alia, to imprisonment. In 1994, the Committee noted that political parties remained prohibited and that a new Constitution was reported to be under examination, but had not yet been enacted.
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> The Committee also noted previously that Constitutional Decree No. 2 of 1989 imposed a prohibition on any strike, save by special permission and that under the Industrial Relations Act of 1976, participation in strikes is punishable with imprisonment whenever the Ministry of Labour has decided to submit a dispute to compulsory arbitration; under section 17 of the Act, the Minister, may, whenever he deems it necessary, refer the dispute to an arbitration tribunal whose award is final and without appeal.
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> Noting that under Chapter IX of the Prison Regulations 1948 (section 94) prison labour is compulsory for all convicted prisoners, the Committee had expressed the hope that the Government would take the necessary measures to ensure that penalties involving compulsory labour could not be imposed as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system, or as a punishment for having participated in strikes.
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> In its 1994 observation, the Committee had noted the Government's statement in its report received in 1993 that the Prison Regulations of 1976 abolished forced labour and that sentences involving imprisonment did not include forced or compulsory labour. The Committee accordingly requested the Government to supply a copy of the Prison Regulations currently in force. In its reply, received 18 November 1994, the Government indicated that the present Prison Regulations would be sent as soon as received from the Prison Department; in addition, a new draft of the Prison Regulations had been prepared and submitted to the competent authorities for adoption and a copy of these Regulations was to be sent as soon as adopted. The Committee notes that neither the 1976 version of the Regulations nor a revised one has been supplied so far, and that the Government makes no mention of them in its latest report.
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> In the circumstances, the Committee is unable to ascertain that national legislation is compatible with *Article 1(a) and (d) of the Convention*. It again expresses the hope that the Government will supply the text of the Prison Regulations referred to earlier, as well as copies

of the statutory instruments governing associations, political parties and the security of the State.

Article 1(b). In its previous comments, the Committee noted the triennial Economic Salvation Programme 1990-93. Referring to the recommendation of the National Congress of Economic Salvation that compulsory national service should be afforded moral and material support in order to direct human powers into building the national economy, the Committee noted the Government's statement in its report received in 1993 that the competent services had started to take practical measures to implement the recommendation by calling up the persons to whom the requirements of compulsory service apply; the Committee requested the Government to supply details of the measures adopted with a view to giving effect to the above recommendation.

In the absence of any reference to this matter in the Government's reports received in 1994 and 1995, the Committee once again requests the Government to supply full information on the call-up of "persons to whom the requirements of compulsory service apply", including the text of any applicable statutory or administrative provisions, so as to enable the Committee to ascertain that compulsory service is not being used as a means of mobilizing and using labour for purposes of economic development.

Article 1(e). With regard to the Government's obligation to suppress and not to make use of any form of forced or compulsory labour as a means of racial, social, national or religious discrimination, the Committee refers to its observation under the Forced Labour Convention, 1930 (No. 29).

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

United Republic of Tanzania (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

Article 1(a), (b), (c) and (d) of the Convention. In its earlier comments the Committee referred to a number of provisions contained in the Penal Code, the Newspapers Act, the Merchant Shipping Act and the Industrial Court Act, under which penalties involving compulsory labour may be imposed in circumstances falling within the scope of the Convention. It noted the Government's statement in its report received in 1992 that ministerial consultations aimed at amending the legislation referred to above were continuing, bearing in mind the political situation, following the adoption of the ninth constitutional amendment. The Constitution, as amended, has allowed for multi-party politics; and the Political Parties Act 1992 has provided specifically for formation and registration of political parties.

The Committee expressed the hope that the draft legislation under consideration would provide for the repeal of all provisions which are incompatible with the Convention and that the Government would indicate the action taken in this regard. The Committee also asked the Government to provide information on the amendment or repeal of the provisions of different enactments to which it referred in its comments under Convention No. 29 and which are in contradiction with Article 1(b) of Convention No. 105.

The Government indicates in its latest report that proposals regarding amendment of the Merchant Shipping Act so as to bring it into conformity with the Convention have been submitted by the trade union to the Government for purposes of being tabled within the Labour Advisory Board (LAB) for consideration by the tripartite partners, and that the Government intends to supply information on the position of the LAB as soon as its work is completed.

In the absence of new information concerning the amendment of other Acts referred to above, the Committee again expresses the hope that the necessary action will be taken in the near future for the repeal of all provisions incompatible with the Convention, and that the

Government will soon report progress made in this regard. The Committee is again addressing a more detailed request on the above matters directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Tunisia (ratification: 1959)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1(d) of the Convention.* The Committee has been pointing out for many years that under the Labour Code participation in a strike is unlawful and may be punished by imprisonment (involving compulsory labour under section 13 of the Penal Code) where it has not been approved by the Central Workers' Organization (section 376bis(2); 387 and 388); and where the Government imposes arbitration, considering that a strike might endanger the national interest (section 384 to 388); similarly, workers may be requisitioned under penalty of imprisonment when a strike is considered to endanger the vital interest of the nation (section 389 and 390). The Committee pointed out that compulsory arbitration and requisitioning, enforceable by penalties involving compulsory labour, should be limited to essential services. It also observed that penalties involving compulsory labour should not be imposed for participating in a strike merely because it has or has not been approved by the Central Workers' Organization.
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> With regard to recourse to compulsory arbitration and requisitioning, the Committee notes with interest Act No. 94-29 of 21 February 1994 amending certain provisions of the Labour Code, under which arbitration is imposed only in the case of disputes affecting an essential service in the strict sense of the term (i.e. the interruption of which would endanger the life, personal safety or health of the whole or a part of the population). The list of essential services is established by decree. The Committee asks the Government to provide the list of essential services as soon as it has been adopted.
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> With regard to the provisions of sections 376bis(2), 387 and 388 of the Labour Code, under which participation in an unlawful strike (i.e. one which has not been approved by the Central Workers' Organization) may be punished by imprisonment (involving compulsory labour under section 13 of the Penal Code), the Committee notes that, in its last report, the Government confirms that a worker who participates in an unlawful strike is liable to a penalty involving prison labour, but considers that it is not forced labour.
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> Referring again to the explanations in paragraphs 128 to 132 of its General Survey of 1979 on the abolition of forced labour, the Committee observes that certain formal requirements concerning the circumstances in which a strike may lawfully be declared fall within the scope of the Convention in so far as they are enforced with sanctions involving compulsory labour. In this connection, the Committee refers to its observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in which it points out that the provision of section 376bis(2), under which a strike is unlawful unless it has been approved by the Central Workers' Organization, could restrict the right of first-level trade unions to organize their activities and promote and defend the workers' interests.
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> The Committee observes that the amendments introduced by Act No. 94-29 of 21 February 1994 to certain provisions of the Labour Code are not sufficient to remove all the discrepancies between the national legislation and *Article 1(d) of the Convention*, and asks the Government to take the necessary measures to ensure that penalties involving compulsory labour may not be imposed for participation in a strike on the sole ground that it has not been approved by the Central Workers' Organization.
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> *Article 1(a).* (a) For 20 years the Committee has been asking the Government to provide information on the application, in practice, of the penal provisions contained in sections 44, 45, 48, 61 and 62 of the Press Code of 1975. It noted previously that by virtue of the Law of Amnesty, No. 89-63 of 3 July 1989, persons sentenced or on trial for violation

of the provisions of the press law, other than the provisions concerning privacy of the individual, had been released, and asked the Government to indicate all cases where the above-mentioned provisions of the Press Code had been applied and to include copies of judicial decisions handed down since the entry into force of the Law of Amnesty, so that it could ascertain that the practical application of these provisions was not affecting the implementation of *Article 1(a) of the Convention*. The Committee notes that, according to the Government's report, such information will be provided as soon as it is available.

(b) The Committee noted previously that under section 24 of Act No. 59-154 of 7 November 1959, as amended by basic Act No. 88-90 of 2 August 1988, the Minister of the Interior may request the dissolution, by judicial decision, of an association whose activities have a political object. Under sections 21 and 30 of the Act, whoever facilitates meetings of an association that has been dissolved or participates in maintaining or re-establishing such an association is liable to a penalty of imprisonment of from one to six months and from one to five years respectively. The penalties of imprisonment involve compulsory labour. The Committee asked the Government to provide information on the application, in practice, of these provisions and to enclose copies of judicial decisions defining or illustrating their scope.

(c) The Committee notes the provisions of Act No. 69-4 of 24 January 1969 relating to public meetings, processions, parades, demonstrations and gatherings, supplied by the Government. The Committee observes that under section 7 of this Act, the competent authorities may ban, by order, any meeting likely to disrupt the public order and safety, and that the only available remedy is appeal to the Secretary of State for the Interior, whose ruling is final. The penalty for offending against this provision is one to two months' imprisonment which is doubled in the event of a second offence (section 24). Section 8 bans meetings on the public highway under penalty of imprisonment of up to six months; the same penalty applies in the event of direct incitement to hold a meeting on the public highway, whether or not the meeting is held (section 25). Under section 12 of the same Act, the competent authorities may ban, by order, any demonstration likely to disrupt the public order and safety. This section provides for no means of resisting the decision, and the penalty is imprisonment of from three months to one year, to be doubled in the event of a second offence (section 26). The Committee stresses the importance, for effective observance of the Convention, of statutory guarantees of the rights of assembly, expression, demonstration and association, and the direct effects that the restriction of these rights can have on the application of the Convention. Often, the exercise of these rights is an expression of political opposition to the established order, and by ratifying the Convention, a State undertakes to guarantee the protection afforded by the Convention to persons who demonstrate such opposition peacefully.

The Committee asks the Government to take the necessary measures to ensure, in accordance with *Article 1(a) of the Convention*, that the persons to whom the Convention affords protection, particularly with regard to the freedom to express opinions in the press, and freedom of association and assembly, may not be subjected to penalties involving the obligation to work, and asks the Government to provide information on all progress made.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Zambia (ratification: 1965)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

1. *Article 1(c) and (d) of the Convention*. Further to its earlier comments on the 1971 and 1990 Industrial Relations Acts, the Committee notes with satisfaction the adoption of the Industrial and Labour Relations Act, No. 27 of 1993, which does not provide for penalties of imprisonment (involving an obligation to work) as a punishment for having participated in strikes, except in essential services, the list of which, given in section 107(10) of the Act, comprises only services whose interruption is likely to endanger the life, personal safety or health of the whole or part of the population.

2. In its previous comments the Committee referred to sections 221, 224 and 225(1)(b), (c) and (e) of the United Kingdom Merchant Shipping Act, 1894, as applied to Zambia by the Merchant Shipping (Temporary Provisions) Act, under which breaches of discipline not involving a danger to the ship or to the life or health of persons may be punished with sanctions involving compulsory labour and seafarers deserting their employment may be forcibly conveyed on board ship.

The Committee previously noted that a Draft Bill prepared by the Government omitted the forcible return on board ship of deserting seafarers and that a suggestion had been formulated by a direct contacts mission in 1989 to bring the clauses of the Bill dealing with disciplinary offences into conformity with the Convention. In its latest report, received in October 1995, the Government indicated that the drafting of legislative measures to replace the United Kingdom Shipping Act, 1894 as applied to Zambia by the Merchant Shipping (Temporary Provisions) Act, was at an advanced stage and would soon be presented for enactment into law. The delay was occasioned by a need for wide consultation on the form of legislation which would take into account the concerns so far raised by the Committee.

The Committee takes due note of these indications. It hopes that merchant shipping legislation will at last be brought into conformity with the Convention, and that the Government will soon be in a position to supply a copy of the new provisions adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Afghanistan, Algeria, Angola, Bangladesh, Bolivia, Burundi, Djibouti, Gabon, Grenada, Hungary, Islamic Republic of Iran, Iraq, Italy, Latvia, Liberia, Lithuania, Mali, Mozambique, Nigeria, Senegal, United Republic of Tanzania, Tunisia, Zambia.***

Convention No. 106: Weekly Rest (Commerce and Offices), 1957

Bolivia (ratification: 1973)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In its previous observations on the need to take measures to give full effect to *Article 8, paragraph 3, of the Convention* concerning compensatory rest, the Committee referred to the Government's indication that the General Labour Law was in the process of revision with the technical assistance of the ILO. The Government indicates in its last report that there have been no changes with regard to the application of the provisions of the Convention. It also hopes that the Government will soon indicate the concrete steps taken in this regard and supply copies of the relevant legislative text.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to *Djibouti*.

Convention No. 107: Indigenous and Tribal Populations, 1957

Argentina (ratification: 1960)

The Committee takes note of the comments submitted by the Educational Workers' Association of Neuquen (ATEN) in February 1996, communicated to the Government in March 1996, alleging the lack of recognition of traditional lands of the Mapuche communities, and the subsequent order of eviction for land usurpation. The Committee regrets that the Government has not sent any information with regard to these allegations. Furthermore, it notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the Government's brief report, which arrived too late to be examined at the last session. It recalls that in its previous observation it called attention to the fact that for some years, the Government's reports had contained almost no information on the practical application of the Convention. It repeats this comment, and again expresses the hope that the Government will provide more detailed information in its next report.
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> 2. The Committee notes with interest that on 24 March 1992, by Act No. 24,071, the Argentine National Congress authorized ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), published in the *Official Gazette* on 20 April 1992, and that Convention No. 169 is therefore incorporated into national law. As the Office has not received the instrument of ratification it requests the Government to keep it informed of its intentions in this regard.
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> 3. The Committee also notes with interest that on 11 August 1994 article 67(15) of the National Constitution was modified to recognize the ethnic and cultural pre-existence of the indigenous peoples of Argentina. Furthermore, it guarantees respect for their identity; the right to an intercultural and bilingual education; the right to possession and ownership of the lands they traditionally occupy; and their participation in any matters affecting their well-being including the use of natural resources. Noting also that the provinces have concurrent authority in this matter, the Committee requests the Government to provide information on any concrete measures taken or envisaged to implement this constitutional provision in practice. The Committee notes in this connection that the National Institute of Indigenous Affairs, created by legislation in 1989, has not yet begun to function.
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> 4. The Committee notes from the Government's report that the Provinces of Chaco, Santa Fe, Salta, Misiones and Formosa have formally adhered to Act No. 23,302 of September 1985 on indigenous policy and support to indigenous communities. Recalling that some provinces have adopted their own indigenous legislation, the Committee notes that the Government will request copies from the provinces and forward them to the ILO. In this context the Committee notes the information communicated to the Government indicating that some of the provincial legislation may not be in conformity with Act No. 23,302. The Committee requests the Government to provide information in this regard, and on the other matters raised in the request being addressed directly to it.

The Committee hopes that the Government will communicate a report for examination at the next session, taking into account its previous comments and the communication from the ATEN.

Bangladesh (ratification: 1972)

The Committee recalls that an armed conflict has been continuing in the Chittagong Hill Tracts (CHT) region, between government forces and the *Shanti Bahini* (Peace Force) — the armed wing of the *Jana Sanghati Samity* — for over 20 years, and that the Government and the JSS have been negotiating a peaceful settlement to the conflict since 1992. The Committee understands that an agreement was signed between the Government and the *Parbattya Chattagram Jana Sanghati Samity* (United Peoples Party of the CHT) while the Committee was in session. Within this context, the Committee requests the Government to provide further information on the content of this agreement in its report next year. Furthermore, the Committee notes that the Government's report has not been received, therefore it must repeat its previous observation which read as follows:

> 1. The Committee notes the Government's report, which arrived too late to be dealt with during the Committee's previous session.
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> 2. With reference to reports of the incident on 17 November 1993 in which a number of unarmed tribal civilians were reported to have been killed at Naniachar, Rangamati District, the Committee notes the statement in the Government's report that the incident was the result of a conflict between rival groups, that the number killed was 13 and that others were injured. It notes further that an inquiry commission has been appointed and that the commissioner, Justice Mohammed Habibur Rahman of the High Court Division of the Supreme Court, submitted a report of the inquiry on 31 May 1994. The Committee requests the Government to provide further information on this matter in its next report. The Committee also notes the information about the inquiry into the violent incident which took place on 10 April 1992 in the tribal village of Logang, Khagrachari District, and about measures taken as a result.
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> 3. The Committee notes that it continues to receive reports of human rights violations against the tribal inhabitants of the Chittagong Hill Tracts (CHT), including information regarding another incident involving unarmed tribal civilians at Bandarban District on 15 March 1995 in which many tribals are said to have been injured, and their property destroyed. There are also allegations that those responsible include the local security force in conjunction with non-tribal settlers, and that a number of tribal students were arrested without due process. It notes further that the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has stated that he continues to receive reports of torture and rape by members of the military and paramilitary forces against the tribal people in the CHT (UN document E/CN.4/1995/34). While it continues to treat such reports with caution, the Committee requests the Government to provide detailed information on measures taken or contemplated to protect the life and property of the tribal inhabitants of the Hill Tracts.
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> 4. *Legislation in force.* The Committee notes that the Chittagong Hill Tracts Regulation (No. 1 of 1900) and the Hill Tracts Districts Local Government Council Acts (Acts No. XIX, XX and XXI of 1989) are applicable in the Hill Tracts. It also notes the information that the Hill Districts (Repeal and Enforcement of Law and Special Provision) Act, 1989 has not come into force. In this context the Committee recalls the concerns of tribal representatives over the possibility of repeal of the CHT Regulation and requests information on whether the Government has considered withdrawing the Hill Districts (Repeal and Enforcement of Law and Special Provision) Act, 1989. It also recalls its request for further information regarding the mechanisms in place to ensure conformity between the Hill Districts Local Government Council Acts and the 1900 Regulation, including procedures to resolve any divergencies.
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> 5. *Articles 11 to 14 of the Convention: Power of the local government councils to allocate land rights.* The Committee notes that the Government has repeated the information in its previous reports concerning the *power* to allocate land rights in the CHT, but that it has not supplied the information the Committee has requested on the allocations of lands *actually made* since the district councils were formed. The Committee considers this of particular importance, and again requests the Government to provide this information in its next report. In this regard, the Committee notes from the report that land allocation is not included in the list of 11 subjects transferred by the Government to the local government councils.
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> 6. The Committee notes from the report that the cadastral survey in the Bandarban district — from which no tribal people have taken refuge in India — will take place shortly; and that the survey has been postponed in the Rangamati and Khagrachari districts from which large numbers of tribals have taken refuge in India. It also notes the Government's statement that a cadastral survey is essential to protect the interests of the "inhabitant owners" of the

land as the local administration is facing tremendous problems in maintaining land records. The Committee recalls that many thousands of non-tribals have been settled by the Government in the CHT, in many cases on the traditional lands of tribal people with the result of displacing the original landowners; and that thousands of tribal people fled to India as a result of the conflict in the CHT. Recalling that more than 50,000 tribals from Bangladesh remain in India, the Committee reiterates its concern that a cadastral survey conducted prior to a resolution of conflicting land claims between the non-tribals and tribal people (including the refugees in India and those who have been displaced within the CHT itself), and the repatriation of all the refugees in India will significantly diminish any opportunities for the original landowners to recover their traditional lands. It therefore stresses its concern that the Government take the necessary steps to protect the land rights of the tribal inhabitants of the CHT region, including appropriate procedures for the recovery of their traditional lands.

7. *Progress in achieving a negotiated settlement of the conflict and return of tribal refugees.* The Committee notes that the Government has appointed a nine-member Parliamentary Committee to conduct negotiations with the Jana Shanghati Samiti (JSS), and notes the information on the proposals submitted. It also notes that there was a general amnesty until June 1994, and that the negotiations are continuing. The Committee requests the Government to keep it informed on any further progress in achieving a negotiated settlement to the conflict. Please also indicate whether the general amnesty is still in place or has been renewed, and details of its application to the cases of warrants of arrest against tribal people.

8. The Committee notes from the report that a first instalment of 379 tribal families have arrived in the CHT as part of the repatriation of the tribal refugees from India. It also takes note of the comprehensive rehabilitation package outlined in the report including financial and other assistance, possibilities of reinstatement in previous employment, special educational facilities, and the restoration of their land, and that there shall be no resettlement in cluster villages. It notes further that a Rehabilitation Committee has been established with a tribal MP as president. The Committee notes further that there have been two missions to the country from India to observe the repatriation process. In this respect, the Committee notes that it has received reports from various sources indicating problems in the implementation of the agreements. It requests the Government to keep it informed in this regard.

9. *Situation of other tribal populations of Bangladesh.* The Committee notes the statement in the report that, contrary to the information the Committee has received, no cases have been brought by the Koch or the Mandi of the Madhupur Forest against the Forest Department, and that there is no conflict between the aboriginal groups and others, including the forest departments. The Committee requests the Government to keep it informed in this regard. The Committee recalls also that it has made repeated requests for information on the situation of other tribal groups in the country, to which the Government has not replied, and again requests it to provide this information.

10. The Committee is raising additional points in a request addressed directly to the Government.

The Committee hopes that the Government will submit detailed information in its next report.

Brazil (ratification: 1965)

1. The Committee notes the information supplied by the Government in a report presented just before the end of its November-December 1996 meeting and in the report sent by the Government in August 1997, with their respective annexes.

2. *Invasion by "garimpeiros".* The Committee noted that certain groups of *garimpeiros* (independent gold miners) had been expelled from various regions. At the 83rd Session of the Conference, the Government representative informed the Conference Committee that the number of *garimpeiros* in October 1995 was 3,000, but that this was

an estimate since the *garimpeiros* were constantly crossing the border with Venezuela and it was difficult to monitor their movements due to the size of the Yanomami territory. Nevertheless, he stated that the Government would undertake joint action with the Government of Venezuela to tighten border controls. The Government also stated that it did not have the necessary resources available because they had not been allocated in the federal budget. The Conference Committee was also informed that the number of *garimpeiros* in indigenous lands was increasing.

3. The Committee notes the new information supplied in the Government's report to the effect that there is a report of the Directorate of Land Matters of the National Indian Foundation (FUNAI) on invaded indigenous lands and the general number of the invaders is known only during the progress of land demarcation work and verified when resources are available for their expulsion. Similarly, it notes that discussions are taking place in the FUNAI President's office on the conclusion of agreements with various non-governmental organizations, private enterprises and indigenous groups for the establishment of economic projects in indigenous lands as a way of offering economic alternatives to people who are forced by poverty to turn to *garimpagem* (independent gold mining) in indigenous lands.

4. The Committee also notes that since October 1996 there has been in operation an inter-ministerial working group comprising FUNAI, the federal police, the Ministry for the Armed Forces, the Ministry for the Air Force, the Ministry of Mines and Energy and the Ministry for the Environment. This group has jurisdiction in the states of Roraima and Amazonas and its function is to coordinate the expulsion of *garimpeiros* from the Yanomami area. The Committee also notes that a Yanomami working group was established, in association with the Boa Vista Office of FUNAI, charged with carrying out the operational guidelines laid down by the inter-ministerial group and that budgetary resources have been provided for the operation. This has resulted in a study of clandestine landing strips, the number of planes used, and pilots and fuel suppliers who are working illegally in the Yanomami area. The report indicates that, in May 1997, a logistics structure began to be set in place in the theatre of operations, an area which lacks the necessary facilities for such an operation, including transport, communications, lodgings and energy supplies. Preparations are being finalized for the operation to expel the *garimpeiros* in which the jungle-trained units of the army will participate.

5. In relation to bilateral cooperation with Venezuela, the report indicates that a working group on illegal mining is still in existence and that the subject is discussed constantly at bilateral meetings with the aim of combatting the illegal presence of *garimpeiros* in the frontier region.

6. On this matter, the Committee requests the Government to send it detailed information on the results of the action undertaken for the definitive expulsion of the *garimpeiros* and other non-indigenous persons from the indigenous areas they are occupying illegally, particularly in Yanomami territory. It also requests information on the measures adopted or to be adopted to avoid the invasion occurring year after year with the well-known consequences for the physical, cultural and social, health and integrity of the people affected. The Committee also requests information on the agreements concluded by the bilateral group on illegal mining constituted by Brazil and Venezuela.

7. *Decree No. 1775 of January 1996.* The Committee noted the adoption of Decree No. 1775 in January 1996 on the administrative procedure for the demarcation of indigenous lands, of which section 9 provided for appeal against decisions on the demarcation of indigenous lands which had not yet been regularized. The Committee requested the Government to provide detailed information on the results of the

examination of the appeals lodged under the Decree and on the definitive demarcation of indigenous lands.

8. The Committee notes the information contained in the Government's reports regarding this point, in particular that 419 appeals affecting 34 indigenous areas were received. The Minister of Justice confirmed the demarcation of 26 areas, judging the appeals to be unfounded. In the case of the other eight areas, the Minister requested further information from FUNAI and the appeals on six of the areas were accepted, while two remain pending in relation to the areas of Krikati and Sete Cerros. The six areas for which appeals were accepted are: Raposa do Sol of the Macuxi tribe; Evaré I of the Tikuma tribe; Seruini-marienê of the Apurinã tribe; Apyterewa of the Parakanã tribe; Baú of the Kayapó tribe and Kampa do Rio Envira of the indigenous Kampa group. In most of these six cases, the Minister of Justice's decision was limited to making adjustments in cases where there were concentrations of non-indigenous people and applying certain constitutional criteria on the concept of indigenous lands. The Committee notes, furthermore, that, according to the Government's report, no indigenous lands were reduced because of the appeals made. Nevertheless, in the case of the area known as Raposa do Sol, the Committee expresses its concern at the effect of this decision contained in ministerial resolution No. 80 which, in fact, amounts to a reduction of approximately 300,000 hectares in the area originally identified by FUNAI in 1993 and its division into five parts making the existence of permanent enclaves of *garimpeiros* within that area, making access possible for non-indigenous persons and excluding over 20 indigenous villages from the area to be demarcated.

9. *Articles 2 and 27 of the Convention* (responsibility for coordinated action). The Committee requested the Government to inform it on the current state of the Integrated Project for the Protection of the Lands and Indigenous Populations of Legal Amazonia (PPTAL) which includes the pilot project for the preservation of tropical rain forests (PP-G7), financed by the G7 industrialized countries and administered by the World Bank through the Trust Fund for Tropical Rain Forests, and whether it is planned to increase the budget of FUNAI for the implementation of the project, as envisaged in the short-term activities of the National Human Rights Programme to assist indigenous societies. In this respect, the Committee notes that FUNAI is an executing party in the financial contribution contracts signed between the *Kreditanstalt für Wiederaufbau* and the Brazilian Government for the regularization of indigenous lands in Legal Amazonia. In 1996, around US$4,600,000 were allocated for the purpose of regularizing indigenous lands and for 1997 the amount of approximately US$6 million dollars is set aside for the same purpose. The establishment of an environmental management pilot plan to be set up in a specified indigenous region is under discussion among the various components of PPTAL.

10. The Committee noted with concern the lack of regular and adequate human and financial resources available to FUNAI and the consequences for indigenous populations of this shortage. The Committee notes the information supplied by the Government that a study on restructuring the Foundation has been submitted to all officials of the institution for the purpose of making the unit commensurate in terms both of staff and finance with the present indigenous policy of Federal Government and the administrative reform guidelines of the State. The President of the Republic has given a favourable response to the document on restructuring the body on indigenous affairs, but the terms of the restructuring have not yet been defined in internal discussions. In general terms, strategic actions related to indigenous territories and the demarcation of areas will become within FUNAI competence. Economic and social activities will become the responsibility of the relevant bodies in the Ministries of Health, Education, Labour, Culture and Planning and

others. With this distribution of functions there has been a natural decrease in the overall value of resources allocated to FUNAI. The report indicates that actions to the benefit of indigenous populations are not restricted to those carried out with FUNAI resources since some of the tasks and responsibilities of the unit are financed with funds from PPTAL.

11. The Committee notes the information contained in the report of the restructuring of FUNAI and requests the Government to keep it informed on the final decision regarding the restructuring. Similarly, it requests specific information on the administration and coordination of the health programmes for indigenous peoples which are the responsibility of FUNAI and the National Health Fund, in particular, on alleged plans to decentralize medical care of indigenous peoples to state and municipal governments. The Committee expresses its concern at this situation, and particularly at the potential lack of coordination of policies on indigenous populations, as is required by the Convention.

12. *Article 10* (protection of human rights). With reference to the Haximu massacre, in July 1993, the Committee notes that a sentence was handed by the court of first instance in December 1996 to impose 19 years' imprisonment for five of the seven accused and that arrest warrants have been issued for the fugitives. Bail is not granted for this crime.

13. *Articles 11 to 14* (land). The Committee requested the Government to provide detailed information on the displacement of indigenous populations due to the construction of hydroelectric projects in the Vale do Ribeira (four hydroelectric projects in that region, of which three were to be undertaken by the State enterprise (CESP) and the fourth by a private enterprise (Brazilian Aluminium Company — CBA). These projects would affect the Guaraní areas, which had already been demarcated in the State of São Paulo (Agenor de Campos, Aguapeú, Guaraní de Barragen and Peruíbe). The Committee also requested information on the opinion of the FUNAI, if it has been expressed, and particularly to indicate whether for the delivery of licences for projects of this nature it is necessary to carry out an evaluation of their effects on indigenous populations, including studies on their environmental or other impact.

14. The Committee notes that the position of FUNAI in this matter is being formulated and that the Tijuco hydroelectric project to be undertaken by CBA has been suspended due to two public, civil actions of the Public Prosecutor's Department of São Paolo alleging that the licences were delivered by the Governments of São Paolo and Paraná and not by the Brazilian Institute of the Environment (IBAMA) which is studying the question. In regard to the Funil, Batatal and Itaóca hydroelectric plants under the responsibility of CESP, approval has not yet been granted to begin the project on this stretch of the River Ribeira do Iguapé. The Committee requests the Government to keep it informed on the progress of these projects and whether studies have been carried out on them regarding the environmental effect they could have, and the position of FUNAI on the matter when this is finalized.

15. The Committee requests detailed information on the purported eviction on 23 December 1996 of indigenous people of the Guaraní-Kaiowá ethnic group from areas which had already been demarcated by FUNAI in Sucuriy, Municipality of Maracaju in the State of Mato Grosso do Sul. On 13 March 1997, in view of the lack of progress in solving their claims before the law the indigenous people reoccupied the lands without a legal order. In May 1977, a local judge ordered FUNAI to carry out the expulsion of the Guaraní-Kaiowás, which was not enforced.

16. On this matter, the Committee wishes to express concern that this ethnic group have been expelled from the above-mentioned lands. It also recalls that under *Article 12*

of the Convention it is incumbent on States to recognize the right to collective or individual property of members of the peoples in question on lands traditionally occupied by them. The Committee requests the Government to take urgent measures to improve the general situation of the Guaraní-Kaiowás and especially to intervene in the search for a solution to the problem facing this population in the municipality of Maracaju. The Committee requests the Government to keep it informed of any progress made in this situation.

17. *Article 15* (labour). Committee asked the Government to supply further information on the measures adopted to secure proper working conditions for indigenous workers, including further information on whether regular inspections were carried out in areas where there are indigenous workers. The Committee also requested information on any specific measure that has been taken or is envisaged with respect to indigenous children working under exploitative conditions. The Committee asked the Government, furthermore, to provide information on the number of contracts concluded, copies of the contracts, the number of indigenous workers who have concluded such contracts and the number of violations reported for the period covered by the contract. The Committee also requested information on the number of cases of forced labour that have been ascertained involving indigenous persons.

18. The Committee notes with interest the information supplied in the Government's report on this point, and particularly the report of the labour inspectorate produced by a mobile coordination group of the Labour Inspection Secretariat on the inspections carried out, at the request of the President of FUNAI, at a sugar cane plantation which had been denounced as employing on irregular basis indigenous persons and minors, allegations which were confirmed. The visit ascertained the existence of indigenous workers without labour contracts, on the grounds that it was in the interests of the indigenous people not to sign a contract, since they tended for cultural reasons, to abandon their work. The presence of children at the workplace was also ascertained as well as the incompatibility of the formal labour system with the rhythm of activity in the village and the custom of children accompanying parents to work. The inspection service checked whether or not labour contracts in the distilleries of the State of Mato Grosso do Sul were correct, and verified the number and copies of the contracts and the number of workers. A report produced in July 1996 indicates that in the seven distilleries inspected, 84 violations were ascertained affecting 3,205 employees of which 2,290 were indigenous persons. By means of Standard No. 1115 of December 1996, the President of FUNAI instituted a disciplinary process to investigate denunciations of involvement of members of that institution in the violations reported. The Committee requests the Government to inform it of the corrective action taken, the administrative or other types of process initiated against the distilleries in which violations to the labour law were confirmed and what sanctions were applied. Similarly, the Committee requests information on whether cases of forced labour involving indigenous people have been ascertained.

19. *Articles 19 and 20* (health). Committee noted the information provided by the Government in its publication "Indigenous societies and government action", and particularly the statement that the health of the indigenous populations does not in general terms show differences from the general condition of the national population. The Committee also noted the additional information provided by the Government on the various health plans for indigenous populations, which are more systematic even though they are insufficient due to the lack of human resources.

20. The Committee notes the latest information from the Government in its report to the effect that FUNAI, as the official body for indigenous affairs, is the reference institution for health requests from indigenous populations. The FUNAI 1996 budget and

the Indian Health Coordination Unit (COSAI) of the Ministry of Health received US$6,800,000 and US$13,800,000 respectively. It also notes the information that, with the objective of increasing financial resources for health, the FUNAI health department has sought to associate itself with other institutions, both federal and state, including the Medicines Central Unit of Mato Grosso do Sul through which medicines are distributed to the Indians depending on the epidemiological and demographic profile of the zone. The Committee also notes the following: programmes have been initiated for the treatment of tuberculosis; an action strategy for AIDS control has been set up; hygiene activities have been initiated in 154 indigenous villages involving 58,113 individuals; immunization campaigns will be carried out; training of indigenous health workers; a plan against alcoholism and other mental problems; training of indigenous agents in oral hygiene and assistance with other institutions for the construction of hospitals and care centres in various indigenous areas. With regard to international cooperation, the report indicates that agreements have been concluded with the Netherlands branch of "Médecins sans Frontières" for the construction of two health posts in the FUNAI regional administrations at Tabatinga and Atalaia do Norte in Amazonas; with "Amerindia cooperación" for the training of indigenous workers in oral hygiene; in December 1996, the Malaria Control Project in the Amazonian Basin (PCMAM), financed by the World Bank, was concluded. Part of the resources for this project, around US$9 million were used for combatting malaria in the Yanomami indigenous area. Another project is being negotiated with the World Bank to combat communicable diseases; this will begin in 1998 and will involve funds earmarked for indigenous areas. Funds are also being managed for a project with the Panamerican Health Organization to cover the gap until the World Bank project begins. The report concludes by indicating that health activities in the Yanomami areas are carried out by the Yanomami Health District (DSY) which acts in conjunction with the National Health Foundation (FNS), FUNAI and non-governmental organizations.

21. In this respect, the Committee notes that activities have taken place to the benefit of indigenous populations' health and that a certain level of international assistance has been obtained to collaborate in efforts to improve care for these populations. Nevertheless, the Committee notes in the annexes to the report that the 1996 report of the National Health Foundation-Indian Health Coordination (COSAI) indicates that the posts of 408 health assistants for the Yanomami Health District, opened to competition in 1996, have still not been taken up (219 for Roraima and 189 for Amazonas), despite the fact that the candidates passed the competitions for these posts in 1996. According to the same report, this has caused an increase in mortality among the Yanomami in the past few years. The Committee notes with regret that, according to this report, despite efforts made by the Government, the Yanomami people and other indigenous populations (Ye'kuana (Maiongong)) show negative rates of population growth. In these circumstances, the Committee urges the Government to take the necessary action to safeguard the lives and health of these peoples and to proceed expeditiously in appointing health assistants to the posts which they have already won in competition and provide them with the funds necessary to fulfill their work effectively with the immediate purpose of improving the critical situation of these populations.

22. *Situation of legislation.* The Committee notes again that Bill No. 2057 of 1991 on the status of indigenous societies and the ratification of Convention No. 169 are still under examination by the committees of the National Congress and that the Government has affirmed its intention to keep the Committee informed on the adoption of these instruments.

India (ratification: 1958)

1. The Committee notes the additional oral and written information submitted by a Government representative to the Committee on the Application of Standards at the 85th Session of the International Labour Conference (1997).

2. The Committee had taken note of the communication sent by the Bijli Mazdoor Panchayat (BMP), a trade union, dated 2 May 1996 regarding alleged practices of "inhuman working conditions" by the Gujarat Electricity Board (GEB), affecting a large number of scheduled tribe workers which it stated should be considered as working under the Factories Act and thus entitled to receive benefits from the GEB.

3. The Committee notes that the Government repeated its previous reply that the regular workers in the Thermal Power Station, many of whom are contract labourers, enjoy normal working conditions, and that the BMP's comments relate only to workers outside the plant premises who are covered by no settlement and do not work for a registered contractor. It also notes that these workers are not protected by the labour legislation in general or by the Factories Act, but that the GEB has provided some basic facilities for the workers in the ash area. In this connection, the Committee recalls that under *Article 15 of the Convention*, ratifying States must adopt special measures for workers belonging to these populations "so long as they are not in a position to enjoy the protection granted by law to workers in general". It urges the Government to take the necessary measures to improve further the working conditions of these tribal workers and to keep it informed of the result of the criminal cases brought against the enterprise concerned. Further, it echoes the general concern expressed during the Conference Committee discussion over the situation of the 68 million tribal people in the country in relation to protection under the labour laws. While noting the practical difficulties arising from the division of responsibilities between national and other authorities, it hopes that the Government will make every effort to ensure it meets its obligations under *Article 15 of the Convention* with regard to these most disadvantaged workers in the country, and that it will report in detail on its efforts in this regard in its future reports.

4. On the question of the *Sardar Sarovar Dam and Power Project*, the Committee recalls that thousands of tribal people are being displaced from their homes by this very large project. Over a number of years, the Conference Committee and the present Committee have requested the Government to take urgent measures to bring its resettlement and rehabilitation policies for tribal people into line with the Convention. The Committee had noted that the information provided by the Government on the progress of the resettlement and rehabilitation of the tribal populations affected by this project up to April 1996 indicated that substantial differences continue to exist among the States of Gujarat, Maharastra and Madhya Pradesh.

5. The Committee requested information on the progress of rehabilitation and resettlement policies of the three above-mentioned States and on the manner in which the allocation of resettlement land takes into account the amount of land previously occupied by the displaced tribal population (the legal concept of "traditional occupation"), including any measures taken or envisaged to compensate for different kinds of land use. The Committee remains concerned by the difficulty encountered in acquiring land for resettlement and providing compensation, in particular in Maharastra and Madhya Pradesh. It requests the Government to keep it fully informed of the progress achieved in this case.

6. The Committee takes note of the explanations provided by the Government representative in the Conference Committee, in particular that the differences in the

progress of resettlement and rehabilitation between the various States were explained by the fact that measures were only taken as the project advanced every year, and the construction of the dam was linked to the implementation of resettlement and rehabilitation measures in order to ensure successful rehabilitation before the lands in question were submerged. The Committee also notes that the progress of rehabilitation is evaluated by a rehabilitation committee, under the chairmanship of the Ministry of Welfare and reporting to the Supreme Court of India. Families affected by the project are given priority which accounts for the substantial differences between States. The Committee requests the Government to keep it fully informed of the development of this project and the resettlement and rehabilitation of the people concerned, as well as of the progress achieved by the States in acquiring land for these purposes. It also requests the Government to provide a detailed report on the compensation measures taken in each State and on the number of people who have already been settled and rehabilitated. Please also provide information on the number of people which the Government expects are to be still displaced.

7. *Other development projects.* The Committee also noted in its previous comments that there are other cases in which tribal people are displaced for development purposes, and requested the Government to provide information on the compensation offered in these other cases. The Committee notes that no information has been received in this regard. It also notes the response given by the Government representative in the Conference Committee that many areas in which mineral resources were mined and other developmental activities undertaken were inhabited by tribal populations and that development was unavoidable for the economic and industrial development of the country. The Committee notes also that the Government representative stated that the Government did not follow a discriminatory policy in applying the rules and regulations in force to provide adequate compensation for the affected people, including tribal people.

8. The Committee takes due note of these points. It reiterates that it does not question either the need to undertake development projects or the benefits they generate for the national population, including, in some cases, employment generation for tribal peoples. Its only concern under this Convention is that the burden of these projects should not fall disproportionately on the tribal people who often inhabit the regions where these projects take place, and that measures compatible with the Convention be taken to provide them with adequate protection, including compensation and resettlement when appropriate. The Committee looks forward to receiving information in the Government's next report about the number and kind of development projects, aside from the *Sardar Sarovar Project*, which have displaced tribal populations, and on the measures taken in each case to meet the requirements of the Convention.

9. The Committee is addressing a request directly to the Government on other points.

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In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Bangladesh, India.*

Convention No. 108: Seafarers' Identity Documents, 1958

Russian Federation (ratification: 1969)

The Committee recalls the representation under article 24 of the Constitution brought before the Governing Body by the Seafarers' Union of Russia in March 1996. The committee set up by the Governing Body to examine the representation requested the Government to submit a report by September 1996 concerning the application of the Convention.

In its subsequent comments, the Committee again requested a report due in September 1997.

The Committee notes with regret that this report was only received in November 1997, at a time when it was too late for it to be reviewed. Therefore, the Committee will duly examine the report at its 87th (1998) Session.

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In addition, requests regarding certain points are being addressed directly to the following States: *Belarus, Guinea-Bissau, Latvia.*

Convention No. 110: Plantations, 1958 [and Protocol, 1982]

Guatemala (ratification: 1961)

Part X of the Convention. See the observation concerning Convention No. 87.

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In addition, requests regarding certain points are being addressed directly to the following States: *Cuba, Guatemala, Mexico, Panama, Philippines, Sri Lanka, Uruguay.*

Convention No. 111: Discrimination (Employment and Occupation), 1958

Afghanistan (ratification: 1969)

1. The Committee notes that no report has been received from the Government. Further to its previous observation, the Committee notes the communication of the International Confederation of Free Trade Unions (ICFTU) dated 4 August 1997, alleging the violation of the Convention by the Taleban authorities, which includes two reports by Amnesty International, entitled "Amnesty International country report on Afghanistan: Grave abuses in the name of religion" (November 1996) and "Women in Afghanistan: The violations continue" (June 1997). This communication was transmitted for comment on 12 August 1997, but no reply to the observations has been received.

2. The Committee notes from the ICFTU communication the allegation that "The Taleban armed militia, which controls around two-thirds to three-quarters of the country, including the capital city, Kabul, enforces a strict code of behaviour in regions under its control. This includes edicts, issued arbitrarily, which restrict women to their homes and ban them from going to work. Girls and women are banned from going to school and attending higher education institutes. These bans have been imposed until further notice. As the Taleban have strengthened their control, there has been no relaxing of restrictions. In several instances, women defying these orders have been beaten in public by Taleban

guards using long chains." It also notes from the November 1996 report of Amnesty International the comment that in November and December 1996:

> ... the humanitarian work of the United Nations agencies and non-governmental organizations [was] severely curtailed by the Taleban authorities, which do not permit women staff to participate in ongoing programmes outside of the health sector. Without women staff, agencies are not able to carry out needs assessment, distribution, monitoring and other activities vital to reaching individuals in need. Agencies have noted a dramatic increase in mine-related injuries suffered by women and children following the prohibition of women's participation in mine awareness programmes and the closure of schools by the Taleban ... The impact of the Taleban restrictions on women is most acutely felt in cities such as Herat and Kabul, where there are significant numbers of educated and professional women, compared with the countryside where women have traditionally been excluded from public life. Kabul University, which has closed since the Taleban took over, reportedly had about 8,000 women students while thousands of professional women worked in different capacities in the city. In Herat, about 3,000 women reportedly lost their jobs after the Taleban took control in September 1995 ... Working women in Herat and Kabul protested in vain against the rigid code the Taleban imposed. A woman from Herat informed Amnesty International that when the Taleban entered the city in September 1995, they closed certain government departments, women's public baths and girls' schools. Women who were government employees received their salaries without working for a while, but that too was then cut ... Female nurses form the backbone of the health system in Kabul. Those who had gone to help their patients in early October 1996 were repeatedly beaten up by the Taleban guards. In one hospital, the Taleban reportedly told all 80 female patients to go home as their modesty could not be preserved in an overcrowded ward.

3. The Committee also notes from the ICFTU communication that UNICEF estimates that 700,000 women have been widowed after nearly 20 years of war in the country and most of these women are now not permitted to work to support themselves and their families, although some exceptions have been made. The 1997 report of Amnesty International states, in this regard that:

> In some exceptional circumstances, the Taleban have suspended their ban on Afghan women working outside the home. However, even these women who have permission to work are not secure in the areas controlled by the Taleban. In May 1997, members of the Taleban are reported to have beaten a group of Afghan women in Kabul who were employed by the aid agency CARE International. Taleban from the department for "preventing vice and fostering virtue" forced the five women out of the minibus in which they were travelling. The women were publicly humiliated in front of a large crowd and two of them were beaten. Foreign agencies have been warned by the Taleban not to employ local Afghan women, but CARE International stated that the five women in question had documents permitting them to continue working in the relief sector ... On a number of occasions in the past, the Taleban have stated that schooling for women and girls would be restored when the security situation in the country improved. However, this has been shown to be an empty promise as girls remain excluded from schools even in areas of southwestern Afghanistan where the Taleban have been in uncontested control for nearly three years.

4. The Committee notes these communications with grave concern. They indicate a lack of respect for the obligation to apply to girls and women the fundamental human rights covered by the Convention. The Committee is also conscious that measures of the type described would impose considerable hardship on the families of the women concerned, as well as on those who benefit in various ways from the activities undertaken by women. Noting that no response has been received either to the Committee's 1996 observation which requested detailed information on this matter, or to the communication transmitted by the ICFTU, the Committee urges the Government to communicate a full

report on all of the measures being taken to restrict or prohibit the educational and employment opportunities of females.

[The Government is asked to supply full particulars to the Conference at its 86th Session.]

Algeria (ratification: 1969)

1. *Article 1, paragraph 1(a), of the Convention.* Further to its previous observation concerning the absence of any protection in the law against discrimination based on religion in employment and occupation, the Committee notes with interest that the revised Constitution of November 1996 contains the following articles: 29 (equality before the law, without any discrimination on grounds of birth, race, sex, opinion or any other personal or social condition or circumstance), 32 (guarantee of fundamental freedoms and human rights), 33 (guarantee of protection of fundamental human rights for individuals and associations, and of individual and collective freedoms) and 36 (inviolability of freedom of conscience and freedom of opinion) which, when read together, would appear to guarantee constitutional protection against religious discrimination. The Committee asks the Government to indicate whether this understanding of the constitutional protection of equality is correct and to supply copies of texts implementing these provisions, if any. It also asks the Government to supply information on the application of the provisions of the revised Constitution, for example copies of court decisions that concern these articles.

2. *Gender equality.* The Committee notes with interest that, by Presidential Decree No. 96-51 of 22 January 1996, the Government acceded with reservations to the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and subsequently, by Executive Decree No. 97-98 of 29 March 1997, created a National Council for Women (which is tripartite and inter-ministerial and acts as a consultative body for the advancement of the status of women in the country and for the conduct and dissemination of research in this area). The Committee asks the Government to provide information in its next report on the activities of this Council to promote the principle of equality of opportunity and treatment in employment and occupation, including copies of information material, studies published on the employment of women and the tripartite involvement in such activities.

3. The Committee raises other points in a request addressed directly to the Government.

Angola (ratification: 1976)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes that the draft of the new General Labour Act, to which it referred in its previous comments, has been approved by the Council of Ministers and has been submitted to the National Assembly for final adoption. The Committee hopes that the Government will continue to keep it informed of the progress made in the adoption of this draft text and would be grateful to receive a copy of it when it has been adopted, as well as of any new regulation or Decree adopted in this field that is related to the principle of equality in employment and occupation embodied in the Convention.
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> 2. With regard to its previous observation on the legislative protection against discrimination on the ground of political opinion, the Committee notes with interest the Government's statement that the term "ideology" contained in section 18 of Act No. 23/92 has to be understood as a synonym of the expression "political opinion". It also notes with

interest the Government's statement that Decrees Nos. 2/95 and 3/95 of 24 March 1995 repeal Decree No. 17/89 of 13 May 1989 issuing the statutes of the Agostinho Neto University (which provided that the University Council shall ensure the political and ideological training of the University's administrative staff and graduates) and section 30 of Decree No. 55/89 of 20 September 1989 to approve the rules governing the University's teaching staff (which provided that the duties of teachers shall include assisting students in their political and ideological training). The Committee would be grateful if the Government would provide a copy of these new Decrees.

3. The Committee is raising other points in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Argentina (ratification: 1968)

In its previous comments, the Committee noted that it had not received any recent information on possible reform of Act No. 22140 of 1980 respecting the basic terms and conditions of employment in the public service, and particularly the need to repeal explicitly sections 8(g) and 33(g) (which provide that entry into the national public administration may be refused and public servants may be dismissed for belonging or having belonged to groups advocating the denial of the principles of the Constitution or for adhering personally to a doctrine of this nature). The Committee notes with interest the information supplied by the Government to the effect that in March 1997 the National Executive sent to the National Congress a Bill on employment in the public administration designed to replace Act No. 22140 and which excludes the provisions criticized by the Committee, namely sections 8(g) and 33(g). The Committee requests the Government to keep it informed of the progress in the National Congress of the Bill on employment in the public administration.

Bangladesh (ratification: 1972)

1. In its previous observations, the Committee has sought to encourage the Government to overcome the obstacles to women's increased participation in employment. While most of the information provided by the Government in its report was reflected in the Committee's previous observation, the Committee also notes the information contained in the Government's report on the Convention on the Elimination of All Forms of Discrimination against Women (United Nations document CEDAW/C/BGD/3-4 of 1 April 1997) according to which the Government has initiated various programmes aimed at reducing the very high level of illiteracy among girls and women. These programmes include the "Food for Education Programme" and an increased commitment to ensuring free, universal and compulsory primary education. In this regard, a separate Division of Primary and Mass Education, responsible to the Prime Minister, was established in 1992. The Committee also notes that a secondary-level scholarship programme for girls outside metropolitan areas has been initiated with the objective of retaining female students at the secondary stage and thereby promoting higher education. This measure also assists in controlling population growth by discouraging girls from marrying before 18 years of age. As a result of these schemes, and many initiatives taken by non-governmental organizations (NGOs), the number of girls in secondary schools has increased from 33.9 per cent in 1990 to 47 per cent in 1995. Campaigns have also been launched by the Government and NGOs to encourage girls' education through radio, television and videos. A special communications initiative called "Meena" has also been launched as part of the mobilization and awareness raising programme to promote the social worth of south Asian

girls. On this point, the Government has expressed concern that the educational curricula are not gender sensitive and often reflect the traditional roles of men and women, thereby reinforcing those roles. The Committee hopes that this issue will receive more attention, and that the Government will also take active measures to reach its target of ensuring that females comprise 60 per cent of all recruitment for primary- school teachers. The Committee asks the Government to continue to provide detailed information on the progress made to enhance the literacy rate of girls and women.

2. As concerns the labour force participation of women, the Government states that, generally speaking, employment opportunities are unequal for women as a large majority of women live below the poverty line and do not receive education. Social constraints and norms relating to women's role also contribute to their lower employment outside the home, but women are the major contributors to the household economy. In its previous comments, the Committee noted that quota provisions had been introduced to increase the recruitment of women in the public service. In addition to recruitment on merit, 10 per cent of officers' posts and 15 per cent of staff positions at the entry level are reserved for women. The age limit for women to be eligible for entry to a government job is 30 years, whereas it is 27 years for men. According to the Government's report on the CEDAW, recent experience has shown that although women's reserved quotas are not being filled, the percentage of women recruited generally in the civil service has been higher than the fixed quotas, which is accounted for by the extent to which women are recruited by merit. At present, women constitute 7 per cent of gazetted officers and 7.4 per cent of other posts. The Government also states that the impact of the quotas is negligible, as very few new posts are available. Over the last five years, however, women have comprised only 14.4 per cent of all recruits into the public service.

3. In relation to other employment, the Committee notes that women's participation in the industrial sector is largest in the construction industry where many work as manual labourers. Women comprise nearly 24 per cent of all manufacturing workers and have been joining this sector as they have been partly displaced from the agriculture sector due to impoverishment and the adoption of new technologies. In the urban area, women are found mostly concentrated in low-paid manufacturing sector activities or in the recently emerged export-oriented labour-intensive industries. The garment and shrimp processing industries are the highest employers of women labourers. Women are also found in electronics, food processing, beverages, apparels, handicrafts and similar areas. The Government states that these industries are predominantly filled by women due to traditional perceptions about how such work is suited to their "natural abilities" and because these industries absorb unskilled and low-paid labour. The Government also indicates that the manufacturing sector does not always provide the minimum required wage level and work environment, as stipulated in the labour legislation. As concerns other employment, 43 per cent of women work in the agriculture, fisheries and livestock sectors but 70 per cent of those women work as unpaid family labourers. The Government's report on the CEDAW provides detailed information on the measures taken by government agencies and NGO programmes to promote employment opportunities for women in the rural areas.

4. The Committee notes the Government's statement that women's socio-economic status differs from their legal status. While the Government expresses its determination to take steps to eliminate discrimination against women through legal measures, it also concedes that women cannot even enjoy those rights provided by existing laws, due to the lack of enforcement. According to the Government, the disparity between the rights women have by law and what they actually enjoy arises partly from the lack of knowledge

of women and men about internationally and nationally recognized women's rights and the lack of commitment by the judiciary and law enforcement agencies. Moreover, the Government states that various procedures make it difficult for women to access and use the judicial system, including, for example the esoteric language, the lengthy and costly procedures and the fact that agencies are often hostile or unsympathetic to women. Noting the establishment of a high-level committee headed by the Minister for Law, Justice and Parliamentary Affairs to examine and update existing laws so as to eliminate all forms of discrimination, the Committee requests the Government to provide information on the outcome of this review. It also requests the Government to indicate the measures being taken to gender-sensitize and train the judiciary, labour inspectors and others concerned with implementing legislation designed to ensure equality for women.

5. Noting also that a proposal has been submitted for approval to revise the recruitment procedures to permit or facilitate women to enter the police force, the Committee asks the Government to provide further information on any measures taken in this regard. Please also provide information on any measures being taken to ensure that women receive the necessary training to participate actively in the public service and at higher levels of organizations, where their representation is still negligible.

Brazil (ratification: 1965)

The Committee notes with satisfaction the progress made in both practice and legislation to eliminate the discriminatory practices to which the Committee's previous comments have referred. Similarly, it notes the detailed report and attached documents supplied by the Government.

1. The Committee noted that in March 1996 the Government launched a "National Programme for Human Rights" and the Committee requested information on progress made in fulfilling the objectives of this National Programme that are relevant to the Convention. The Committee notes that in April 1997 a National Department of Human Rights in the Ministry of Justice was set up, responsible for coordinating, administering and monitoring the implementation of the Programme. In addition, the Committee welcomes the campaign "Brazil, Gender and Race — united for equal opportunities" launched during the seminar held in July 1997 which concluded the last phase of the programme of technical cooperation promoted by the Ministry of Labour, the Ministry of Justice and the Public Prosecutor for Labour Matters, with ILO technical assistance.

2. The Committee welcomes the promulgation of Act No. 9459 of May 1997 amending certain sections of Act No. 7716 which defines crimes resulting from discrimination on grounds of race or colour, imposing more severe sanctions (from one to three years' imprisonment and a fine) and adding other grounds of discrimination such as ethnic origin, religion or national extraction. It also welcomes the establishment of the Multidisciplinary Working Group (GTM), coordinated by the International Department of the Ministry of Labour, with the purpose of sensitizing the various social partners to the problem of discrimination in employment and occupation and ensuring the constant dissemination of the Convention. It also notes that the decision in the first case brought before the labour courts on an appeal for reinstatement by an official who alleged that he was unfairly dismissed from a public enterprise on the ground of race, was upheld by the Higher Labour Tribunal, in third instance, which ordered the reinstatement of the plaintiff. The Committee requests the Government to inform it whether there have been cases based on new Act No. 9459 alleging some of the criteria for discrimination contained in the Convention, in particular, in relation to access to training, employment or terms and conditions of employment.

3. The Committee notes that training courses have been held for labour inspectors in which emphasis has been placed on problems of discrimination in the labour market. It also notes that Bills Nos. 123/92 and 147/95, 715/95 and 129/95 which, as a whole, contain provisions to strengthen the national policy against discrimination, are being studied in the Chamber of Deputies. The Committee requests the Government to inform it in its next report on the progress of these legislative initiatives.

4. With regard to the plans for application of Act No. 9029/95 (on the prohibition to require presentation of a sterilization certificate as a condition for employment), the Committee notes the Government's indication that this Act is being widely disseminated through the latest editions of legal texts, lectures and meetings about the work of the Government in preventing discrimination and at special meetings with the central trade union bodies in the country so that they can inform their members, especially women workers. The Committee would be grateful to receive information in future reports on the impact of these activities.

5. The Committee is addressing a direct request to the Government on other matters.

Bulgaria (ratification: 1961)

1. The Committee in previous observations had requested information on practical efforts to eliminate discrimination on the basis of national extraction. It notes that the Committee on the Elimination of Racial Discrimination shares the same concerns (United Nations document CERD/C/304/Add.29 of 23 April 1997). The Committee notes with interest the information in the Government's latest report on the functioning of the Programme for Literacy, Training and Employment and the programme "From social assistance to employment" developed by the National Employment Office, which are aimed at national minorities and currently being implemented in regions with large numbers of people of Turkish and Roma origin. Noting that, as of December 1996, 54 people in the Lom municipality and, in January 1997, 62 people in the Sliven municipality had entered the "literacy" module of the Programme for Literacy, Training and Employment, the Committee requests the Government to provide information on the number of people that have successfully completed this module and have subsequently entered the "training and retraining" module. The Committee would also appreciate receiving information on the functioning of the "employment" module of the programme which foresees job creation, mainly in the areas of self-employment and part-time and short-term employment, once it becomes operational. The Committee notes that the programme "From social assistance to employment", which aims to enhance the qualifications of the Turkish and Roma minorities by offering them different programme components ("readiness for work", "seeking work" and "vocational training") widened its scope in 1996 and 1997 to include several more municipalities. Of the 2,345 unemployed included in the programme in 1996, 1,226 were subsequently employed and 267 obtained professional qualifications. The Committee requests the Government to continue to provide information on the programme and the results achieved.

2. The Committee also notes with interest the efforts undertaken by the Government to stimulate tobacco production and processing in order to create employment in those regions mainly populated by persons of Turkish origin, where these have been traditional occupations and where skills are thus available. It notes the credit scheme set up under the Professional Training and Unemployment Fund to allow unemployed persons to develop agricultural tobacco production or employers to hire unemployed persons for processing activities. The Committee also notes that, according to the Government, from

April to December 1996, 8,443 people were assisted in finding jobs and that the total number of unemployed persons hired by employers under the programme amounted to 2,266 between August 1996 and February 1997. The Committee requests the Government to continue to provide information on the functioning of the programme and the number of people benefiting from it. Noting that all three programmes focus partly on creating part-time and short-term employment, the Committee requests the Government to provide information on their long-term employment strategies.

3. The Committee notes that the Government's reports are silent on several issues on which it asked to be kept informed and must therefore repeat parts of its previous observation which read as follows:

> *Discrimination on the basis of political opinion.* The Committee notes with interest the repeal of section 9 of the Banking Act (No. 25 of 1992) and section 6 of the Act to amend the Pensions Act of 12 June 1992, which had, respectively, excluded persons connected with the former regime from participation in banks' boards or management and excluded employment in certain specified political bodies of the former regime from counting as pensionable service. These provisions had been declared discriminatory on the basis of political opinion by the Constitutional Court in two rulings delivered in 1992 (copies of which are supplied by the Government), and the Committee had requested the Government to inform it of their implementation. As the Committee had expressed an interest in being kept informed of any other laws restricting access to employment or affecting terms and conditions of employment due to affiliation or association with the former political regime, it would be grateful if the Government would verify the situation of scientists and professors removed from policy-making posts in recent years, and inform the Committee whether these involved any cases based on de-communization texts.
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> *Discrimination on the basis of national extraction or religion.* The Committee had noted the various measures taken by the Government to improve the position of the Turkish minority, and had asked particularly for information on the impact of Council of Ministers Decrees Nos. 139 of July 1992 and 249 of December 1992, both of which aimed at applying the Act on Political and Civil Rehabilitation of Repressed Persons. The Committee thanks the Government for the copies of the Decrees supplied and repeats its request for details on the number of persons who have applied for compensation under them, and on the number of applications settled.
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> In the same vein, the Committee noted that the Government's approach to the problem of compensating the Turkish minority which had been forced to flee the country, evidenced by Decree No. 170 of 30 August 1990 to restore real estate to those Turkish Bulgarians who had been forced to sell, had been challenged in a case presented to the Constitutional Court. Following that challenge, the Government reversed its approach and introduced Act No. 205/1992 on the Restitution of the Ownership of Real Estate to Bulgarian Citizens of Turkish Origin who Applied to Leave for the Republic of Turkey and Other Countries in the May-September 1989 Period, which envisaged restoring the property to the purchasers and leaving the seller returnees of Turkish origin only compensation. The Committee asked for information on the application of Act No. 205. From the copy of the Constitutional Court ruling (No. 18 of 14 December 1992) supplied by the Government, the Committee notes with interest that the Court rejected the claim of the current land owners that the opportunity offered to Turkish Bulgarians to recover title amounted to their unjust enrichment by reason of their ethnic origin. Stressing that the law aimed at remedying an injustice, the Court declared unconstitutional section 5 of Act No. 205/1992, which permitted returnees' claims to be inadequately compensated.
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> Noting that Decree No. 170 remains in force and that it provides for six months' compensation to those returning workers who had been dismissed from their employment and who are registered as unemployed but not receiving other benefits, the Committee asks the Government for information on the number of returnees who have been able to benefit from this compensation.

4. The Committee is addressing a request directly to the Government on other points.

Chad (ratification: 1966)

1. The Committee notes the communication from the Trade Union Confederation of Chad (CST) of 27 June 1997 alleging non-application by Chad of the principle of equality in employment and occupation for women workers. The CST notes that the new Constitution was adopted by referendum on 31 March 1996 and that several of its provisions aim at the elimination of all forms of discrimination against women. Nevertheless, it notes that the Government has taken no concrete measures to facilitate access of women to public and private employment. The CST proposes that the ILO should provide the Government with urgent technical assistance in order to remedy the technical shortcomings, particularly the lack of material facilities in the ministerial department responsible for the promotion of women, and to enable it to collect statistics and carry out comparative research on the employment situation of women.

2. The Committee notes that the CST's observations were sent to the Government for comment. It hopes that the Government's report will arrive soon and that it will contain full information on the various points raised by the CST as well as detailed information on the implementation of the new Constitution. On this latter point, the Committee notes that article 32 of the Constitution states that no one can be discriminated against in their work on the grounds of their origin, opinions, beliefs, sex or matrimonial situation but does not seem to include the other grounds of discrimination set out in *Article 1, paragraph 1(a), of the Convention*, namely race and colour.

3. In this regard, the Committee draws the Government's attention to paragraph 58 of its 1988 General Survey on equality in employment and occupation which states that where provisions are adopted in order to give effect to the principle contained in the Convention they should include all the grounds of discrimination laid down in *Article 1, paragraph 1(a)*. The Committee hopes that the Government's next report will provide details on the manner in which protection against discrimination on the grounds of race and colour is provided under the national policy on equality in employment.

4. The Committee is addressing a direct request to the Government on other matters.

Chile (ratification: 1971)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes with interest the information regarding Act No. 19.234 of 5 August 1993 under which benefits will be granted to the workers dismissed for political reasons between the period of 11 September 1973 and 10 March 1990, in particular that the Institute de Normalización Previsional (INP), the responsible authority, has commenced its work in allocating pensions and other benefits (a large number of applications are, however, still pending). The Committee also notes that Act No. 19234 was amended by Act No. 19.350 of 14 November 1994 so as to expand its scope of application and to render formalities for applying for benefits more flexible. The Committee requests the Government in future reports, to continue to supply information on the practical application of the Act.
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> 2. The Committee recalls its previous requests to the Government to provide information on progress made in two matters, namely: (a) the express repeal of Decrees Nos. 112 and 139 of 1973, Nos. 473 and 762 of 1974, and Nos. 1321 and 1412 of 1976 which grant broad discretionary powers of termination of employment to university rectors so as to

> preclude any ambiguity given the Government's indication that they have been tacitly repealed and are without effect; and (b) the repeal or amendment of section 55 of Decree No. 153 of 1951 (legal status of the University of Chile), and section 35 of Decree No. 149 of 1951 (statutes of the University of Santiago), in order to ensure that no one may be denied access to or expelled from universities or educational establishments on grounds prohibited by the Convention. As the most recent reports are silent on this legislation, the Committee repeats its request to the Government to provide information in its next report on legislative measures taken to bring the national legislation into conformity with the Convention as referred to above.
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> 3. The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will submit detailed information in its next report.

Colombia (ratification: 1969)

1. The Committee notes the communication dated 19 November 1996 submitted by the National Union of National Tourist Board's Workers (SNT) relating to alleged violations of the Convention by the Government in drawing up the General Tourism Act No. 300 of 30 July 1996. The SNT's communication claims that this Act, in particular sections 101, 102, 103 and 108, violates ***Article 1, paragraph 1(a), of the Convention***, because it establishes a different statute for workers of the National Tourist Board in relation to the termination of employment contracts, pension rights and admission to other state bodies, since they have already received compensation for their dismissal. The Committee also notes the detailed information sent by the Government in relation to the SNT's communication. In particular, the Government points out that at no time does the text of the Act seek to nullify or impair equality of opportunity or treatment in employment or occupation.

2. In this respect, the Committee notes that it is not clear from the SNT's communication how the sections of Act No. 300 violate the principles of the Convention, since paragraph 1(a) of Article 1 of the Convention establishes seven specific criteria for discrimination likely to nullify or impair equality of opportunity or treatment in employment or occupation (race, colour, sex, religion, political opinion, national extraction or social origin) and none of the seven criteria for discrimination has been mentioned in the points raised in the SNT's communication. In these circumstances, the Committee considers that the questions raised by the SNT do not fall within the framework of the Convention.

3. Finally, the Committee notes with interest the adoption of Act No. 393 of 1997 on enforcement procedures, which can be brought by any person, physical or legal, whose interests have been harmed by the failure of a public authority to comply with a law or administrative act. The Committee would be grateful if the Government would inform it whether under this Act, cases can be brought for acts of discrimination in employment and occupation.

Costa Rica (ratification: 1962)

The Committee notes the detailed comments sent by the Costa Rica Inter-Confederal Committee on 26 August 1997 alleging problems in the Government's effective application of the Convention and its failure to send to the Inter-Confederal Committee copies of reports on Conventions in accordance with article 23 of the ILO Constitution. This communication was sent to the Government for comment on 12 September 1997. The

Committee notes that the Government has sent no information on it nor a report. It therefore hopes that it will receive the report together with the Government's observations on the Inter-Confederal Committee's communication for examination at its next session.

Cuba (ratification: 1965)

1. The Committee notes the Government's report and the information supplied by the Government representative at the Conference Committee in June 1996 in reply to the points raised in its previous comments, and the ensuing discussion.

2. *Access to higher education.* The Committee notes the supplementary explanations on the role played by the Communist Party of Cuba and the trade unions in the "consultations" provided for in section 21 of resolution No. 1 of 1994 on admission to post-secondary and higher education. Resolution No. 1 is issued every year and applies only to full-time students, having no employment relationship, who have completed the 12th grade in pre-university institutions and wish to follow regular day-time courses in higher education. The Government explains that holding these examinations for admission to regular day-time courses involves substantial resources, preparation of premises and of material, transport and accommodation, since they are taken simultaneously by all students of the pre-university institutions and recourse is had to the bodies mentioned since they are the only organizations having such massive resources. It is at this organizational stage that the so-called "consultations" are carried out only on the logistic needs; the consultations with the Communist Party of Cuba or the trade unions do not affect in any way the results of the admission examinations or academic assessment needed to enter these courses.

3. *Conditions of employment of senior officials.* The Committee had noted that the labour and wages law was being examined with a view to adapting it to new conditions, taking into account the Committee's comments, and that consultations were being held with organizations, enterprises and trade unions to this end. The Committee therefore requested the Government to provide copies of the revised legislation when it is adopted. In this regard, the Committee notes that the Executive Committee of the Council of Ministers recently adopted agreement No. 2896 (a document exclusively for internal use by the Executive Committee of the Council of Ministers) which established the Central Commission on Senior Officials, composed of members of the Council of Ministers. The function of the Central Commission is the assessment, selection, preparation, promotion and motivation of senior officials in the Central Administration of the State and its reserve list, issued under Legislative Decree No. 82 of 1984 and its regulations. The requirements in these legal instruments relate to personal integrity, management capacity, educational level, and management and work experience. The Central Commission submits its findings to the Government for approval.

4. The Committee notes with interest that section 3 of Legislative Decree No. 82 defines "senior officials" as workers who as a general rule occupy posts in the management category in a state institution. Similarly, section 6 provides that the requirements for occupying senior posts are determined and evaluated on the basis of the category, hierarchial level and sector or branch to which the institution belongs and the nature of the job in question. In view of the detailed explanation provided, both in the report and in the relevant legislative texts, the Committee expresses the hope that it will continue to be informed of any new legal instrument adopted concerning this point.

5. With reference to the Latin American Central of Workers (CLAT) allegation in 1992 of the dismissal of 14 university teachers for having expressed their political opinions, the Committee had noted the Government's statement that the college of teachers and the student body made a request to the rector for the dismissal of those teachers.

According to the Government, this is an exceptional procedure under Legislative Decree No. 34 of 1980 applicable solely to members of educational institutions who come into direct contact with students. The Committee recalls that the type of discriminatory treatment suffered by the teachers, based on the expression of political opinion, is contrary to the Convention, irrespective of the body which took the decision to dismiss them.

6. The Committee notes with interest both the Government's report and the statement of the Government representative that a draft legislative decree has been prepared, taking into account the Committee of Experts' comments, on the system of labour law. The draft contains substantive and procedural provisions on violations of labour discipline and applicable sanctions and stipulates the bodies which administer labour law. This draft proposes the repeal of Legislative Decree No. 34 of 1980 and, at present, is undergoing a consultative process with organizations, enterprises, trade unions, the courts and other institutions involved in the proposals in the instrument, the intention being not only to eliminate those aspects which might be interpreted and applied wrongly in connection with the Convention, but also to examine the possibility of consolidating the procedures so that they would correspond to the principles governing the ordinary procedures in force regarding employment sanctions. The Committee requests the Government to send it a copy of the draft once it has been adopted.

7. *Conditions of employment of journalists.* With reference to the evaluation of the results of the work of journalists based on systematic surveys of public opinion, the Committee thanks the Government for having sent a copy of the form used to evaluate the journalists' work and the text of the public opinion survey prepared by the "Editora Juventud Rebelde". The Committee notes that the form is a document intended to verify the quality of work and popularity of the items published. Bearing in mind the concern expressed by the Conference Committee in its conclusions in regard to the possibility that discrimination on the basis of political opinions exists in this sector, the Committee requests the Government to supply information on the working conditions of the journalists who express political opinions contrary to the Government.

Cyprus (ratification: 1968)

1. The Committee notes that by a letter dated 11 April 1997, the Trades Union Congress (TUC) alleged that a named individual who is a member of a union affiliated with the TUC, had suffered discrimination in violation of the Convention on the ground of political opinion, over a period of more than 20 years, by the Cyprus Airways Group in which, according to the TUC, the Government has an 80.46 per cent share. The TUC states that Cyprus Airways and Eurocypria Airlines Ltd. resorted to a variety of measures to avoid extending the individual's fair access to employment as a pilot, despite documentary proof relating to his proficiency as a pilot and the findings of an independent investigation by well-qualified pilots who recommended that he be re-instated by Cyprus Airways. According to the TUC, the record in the Group shows that there is plentiful scope for discrimination in employment and a lack of redress for victims of discrimination which is inconsistent with the requirements of the Convention. Commenting on this communication, the Government supplies a detailed explanation of procedures for the issuing of permits to pilots and stresses that it acted within the framework of the existing legislation, which the Committee has examined with care. The Government adds that the authorities acted in good faith bearing in mind the requirements of the post in question and practice in the industry, and that it did not violate in any way the provisions of Convention No. 111.

2. The Committee notes the information provided by the TUC and by the Government concerning this matter. As the Committee has not been presented with the necessary details on how political opinion may have swayed the decision not to employ the individual in question, it is not in a position to determine whether the Convention has been violated in this particular case.

3. The Committee is raising other matters in a request addressed directly to the Government.

Ecuador (ratification: 1962)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

> 1. Regarding its previous observation concerning the restriction on women entering the Stock Exchange (section 66(c) of the Commercial Code), which is not applied and is to be examined as part of the legislative reforms, the Committee notes from the Government's report that it remains fully committed to expediting the process in the National Congress for the adoption of legal reforms to bring the national legislation into full conformity with ratified Conventions, in particular *Convention No. 111*. The Committee also notes that, to achieve this end, the Government has made a number of efforts for the necessary reforms of the Commercial Code and the Act on Cooperatives. The Committee requests the Government to keep it informed of progress in this respect in its next report.
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> 2. The Committee is raising other matters in a request which it is addressing directly to the Government.

The Committee hopes that the Government will submit detailed information in its next report.

Egypt (ratification: 1960)

1. The Committee notes with satisfaction that Act No. 96 of 1996 repeals Act No. 148 of 1980 respecting the power of the press, on which it made comments to the effect that section 18 of the Act established discrimination based on political opinion by restricting newspaper publication or ownership on political grounds. The Committee also notes the Government's confirmation that the repeal — already noted in its previous observation — by Act No. 221 of 1994, of Act No. 33 of 1978 on the Protection of the Home Front and Social Peace means that Presidential Decree No. 214 of 1978 establishing the principles of Protection of the Home Front and Social Peace is no longer applied by any legal instrument.

2. With regard to the employment situation of women, the Committee notes the Government's statement that training in household work — together with painting, music and sports — is part of the regular curriculum taught to girl students in all secondary, intermediate and primary schools. It also notes that, according to the Government, in 1994 there were 17,800 women in high-level posts (according to statistics from the Central Bureau for Statistics and Mobilization) and that with regard to vocational training irrespective of sex, the sole criterion used in assessing skills and interests is the personal aspirations and willingness of the individual, whether male or female. The Government provides statistical data in this connection showing the training provided to men and women, with particular reference to vocational training, skill-level assessment and vocational guidance. On the strength of the examples given, the Government states that not only are there no "typically male" jobs or occupations, but there is also a tendency among women to seek training in occupations formerly considered to be "typically male". In this connection, the Committee would again point out to the Government that this

situation could be further improved through the adoption of appropriate measures to guide women towards training which is less typically or traditionally female in order to promote the principle of equality.

3. The Committee recalls that in its 1988 General Survey on equality in employment and occupation, it considered that archaic and stereotyped concepts with regard to the respective roles of men and women "are at the origin of types of discrimination based on sex and all lead to the same result: the nullification or impairment of equality of opportunity and treatment. Occupational segregation according to sex, which leads to the concentration of men and women in different occupations and sectors of activity, is to a large extent the product of these archaic and stereotyped concepts" (paragraphs 38 and 97).

4. With regard to practical measures taken to apply a national policy to promote equality of opportunity and treatment for women, the Committee notes the information supplied by the Government and the summary of its report to the Fourth World Conference on Women held in Beijing in 1995. The Committee also notes the statistical data for the period from 1985 to 1995 showing that, during that period women progressed in a number of areas: the proportion of women in the total number of senior government officials increased from 5.7 per cent in 1980 to 11.8 per cent in 1992; the proportion of women in the management category increased from 13.7 per cent in 1984 to approximately 20 per cent in 1988; the proportion of women in the employers' category increased from 5.5 per cent in 1984 to 17.1 per cent in 1988. The Government also cites machinery and programmes that have been developed recently to encourage the advancement of women, such as the National Committee for Women (whose responsibilities include strengthening the role of women in society, improving the performance of women, studying the problems women encounter and the means of solving them on a scientific basis), the General Department for Women's Affairs of the Ministry of Social Affairs (which has carried out projects such as developing the role of women in food production, the creation of women's clubs for the improvement of living standards in local communities and the autonomous development of rural and urban communities) and the Ministry of Agriculture's unit responsible for policy and coordination in women's agricultural activities (which conducts many activities to improve the situation of rural women). The Committee asks the Government to continue to provide information on the progress made by the various mechanisms set up to improve the proportion of women in employment and their representation in high-level posts, which remains low in the above-mentioned sectors.

5. Observing that the Government cites in the report it presented at Beijing, the "domination of traditional values" especially in rural and isolated areas as one of the obstacles to women's integration in development and their entry into the formal labour market, the Committee hopes that the Government's next report will indicate measures taken or envisaged to overcome such obstacles.

6. The Committee raises other points in a request addressed directly to the Government.

Germany (ratification: 1961)

1. The Committee takes note of the Government's reports and of the numerous documents annexed to them.

2. *Discrimination on the ground of sex.* Further to its previous observation requesting information on the implementation (in access to vocational training, access to employment and terms and conditions of employment in the federal administration) of the

Second Equality Act, in particular on section 14 (three-yearly report to be tabled in Parliament documenting progress on the situation of women in the federal administration and public undertakings), the Committee notes that the first report under section 14, for the period 1996-98, will be transmitted as soon as it is available. It notes with interest from the Government's third report (1992-94) on the situation of women in the federal administration (presented to Parliament under the former legislation in November 1996) that, while the actual total number of civil servants has diminished, the trend to increased percentages of women in higher grades and posts of responsibility continues. At the same time, it notes with concern that, while the actual number of public officials has slightly increased, the percentage of women in the highest band (Höherer Dienst) has dropped from 51.4 per cent in 1990-91 to 39.1 per cent in 1993-94, implying that men are filling the new higher level public employee *(Angestellte)* posts. The third report shows that family-friendly policies continue to expand with a view to enabling women's career progression, and states that the next report will be tabled in accordance with the Second Equality Act. The Committee looks forward to receiving, with the Government's next report, the document tabled in Parliament on the impact of the Second Equality Act and any other information on its application in practice.

3. Following the European Court of Justice decision in *Kalanke v. City of Bremen*, the Committee had requested information on how the ruling affected government policies in the area of affirmative action for the elimination of discrimination against women. It notes the Government's statement that there has been no impact on its policies since the Second Equality Act contains no provisions on automatic quotas for women, which was the subject-matter of that case. Moreover, the Government confirms that other affirmative action measures are not affected and remain both necessary and possible.

4. *Discrimination on the ground of political opinion*. Following up on the recommendations of the 1987 Commission of Inquiry report and the provisions in Annex I of the German Reunification Treaty, the Committee has been requesting the Government to ensure that, in relation both to applicants for government jobs and stability of employment in the public service, particularly for teachers, legislative requirements of questioning as to faithfulness to the free and democratic order be applied restrictively having regard to the nature of the job. The aim of this request was to ensure that restrictions on employment in the public service correspond to the inherent requirements of particular jobs within the meaning of *Article 1, paragraph 2, of the Convention*, or can be justified under *Article 4*. The Committee notes that the Government supplies data on the number of terminations made under the provisions of Annex I and appeals lodged against them in the various Länder, which appear to have mixed results (roughly two-thirds of the appeals upheld the terminations and one-third of the appeals were dismissed, with a number of agreed settlements or withdrawals).

5. The Committee notes with interest from the Government's most recent report that, on 8 July 1997, the Constitutional Court delivered four fundamental decisions regarding special cases of dismissal pursuant to the provisions of the Reunification Treaty, upholding their constitutionality. It is in principle admissible to ask questions regarding the individual's previous activity in the state security apparatus, but situations should be examined on a case-by-case basis. Activities "in the distant past" (in the cases in question, activities which ended before 1970) could have no or very little relevance to the current employment relationship or candidature. In this connection, the Committee had also asked for information on the impact of the European Court of Human Rights decision in *Vogt v. Germany* on the re-employment opportunities of civil servants dismissed under these provisions, provided that they satisfy the recruitment and qualification requirements. It

notes that, according to the Government, this case gave important guidance on the principle of proportionality (whether removal from service of a permanent civil servant is proportional or not depends on the circumstances of the individual case) and that all other cases of dismissed teachers are closed. Its impact can be seen in the jurisprudence of the Land-level Labour Court of Chemniz to the effect that "a dismissal from the public service can no longer be based on the holding of specific functions, for instance in the former German Democratic Republic. Account must also be taken rather of the service record of the dismissed person as well as any possible orientation following the collapse of the Socialist Unity Party, towards the free political order".

6. The Committee welcomes these jurisprudential developments, which reflect the recommendation of the Commission of Inquiry and its own previous comments, to the effect that it is important not to attribute excessive importance to activities undertaken at a time when applicants for civil service jobs were not bound by any public service relationship and to provide an opportunity for them to demonstrate, once they are in such a relationship, that they will respect the obligations attached thereto. The Committee would appreciate receiving information from the Government in future reports on any new court challenges to refusal to hire or to termination of employment in the public service on the basis of past political activities.

7. Observing that criteria similar to that for "extraordinary termination" of the work relationship set out in Annex I to the Reunification Treaty had been adopted in various Länder in the form of announcements and guidelines for civil service employment, the Committee had also requested the Government to supply information on how the specific Land-level texts are being implemented in practice. It notes the Government's indications that each case is examined on an individual basis, and that the Länder themselves supply general information on the procedure for interviews. The Committee asks the Government to inform it, in future reports, of any changes to the Länder announcements and guidelines that might affect the application of the prohibition on discrimination in employment on the basis of political opinion contained in the Convention.

8. The Committee is addressing a request directly to the Government on other matters.

Guatemala (ratification: 1960)

1. *Discrimination on the ground of sex.* For several years, the Committee has been raising the discriminatory nature of section 114 of the Civil Code which provides that a husband may oppose his wife's employment provided he earns enough to maintain the household. The Committee notes with interest the Government's report, in particular that the Committee on Legislation and Constitutional Matters of the Congress of the Republic is studying a bill which would repeal section 114 of the Civil Code. The Committee requests the Government to inform it on the progress in Congress of this bill.

2. The Committee is also addressing a direct request to the Government on other matters.

Guinea (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes that the Government's brief report does no more than repeat the information given for a number of years. It therefore trusts that the Government will

provide with the next report more detailed information on the progress made in bringing its national legislation into conformity with the 1990 Constitution and the Convention and that it will send copies of the codes, decrees, orders, decisions and collective agreements which are being prepared or revised once they have been adopted.

2. With regard to the public service in particular, the Committee notes that the Government repeats its previous statement that the public service regulations are still being harmonized with the new Constitution and the Convention. The Committee reiterates the hope that the Government will take into account its previous comments concerning amendment of section 20 of the Ordinance of 5 March 1987 on the general principles of the public service (which excludes discrimination only the basis of philosophical or religious views and of sex) and the inclusion in the new revised regulations of all the grounds of discrimination set out in *Article 1, paragraph 1(a), of the Convention*. In this respect, the Committee draws the Government's attention to paragraph 58 of its 1988 General Survey on equality in employment and occupation which states that where provisions are adopted in order to give effect to the principle contained in the Convention, they should include *all* the grounds of discrimination laid down in Article 1, paragraph 1(a), of the Convention.

3. The Committee is addressing a request directly to the Government on other points.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Hungary (ratification: 1961)

The Committee notes that the Governing Body at its 270th Session (November 1997) declared receivable a representation made by the National Federation of Workers' Councils (NFWC), under article 24 of the ILO Constitution, alleging non-compliance by Hungary with the Convention. In accordance with its usual practice, the Committee is postponing its comments on the application of the Convention pending the Governing Body's adoption of the conclusions and recommendations of the tripartite committee appointed to consider the matter.

India (ratification: 1960)

1. The Committee notes with satisfaction that the Supreme Court of India recommended a set of guidelines against sexual harassment in its judgement *Vishaka and Ors. v. the State of Rajasthan and Ors.* of 13 August 1997. The Supreme Court considered that gender equality includes protection from sexual harassment and the right to work with dignity, which is a universally recognized human right, and that the common minimum requirement of this right has received global acceptance. It considered that the international Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose. Within the guidelines, the Supreme Court defined sexual harassment as including such unwelcome sexually determined behaviour (whether directly or by implication) as: (a) physical contact and advances; (b) a demand or request for sexual favours; (c) sexually coloured remarks; (d) showing pornography; and (e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature. The guidelines also cover prevention, criminal proceedings, disciplinary action, and complaint mechanisms. The Supreme Court felt compelled to issue the guidelines in the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and to guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces. The Court, accordingly, directed that the guidelines and norms issued should be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of working women and that they be binding and enforceable by law until suitable legislation is enacted in this

area. In light of the considerations of the Supreme Court, the Committee requests the Government to indicate whether it intends to enact legislation on sexual harassment.

2. The Committee notes from the Government's report to the Human Rights Committee (United Nations Document CCPR/C/76/Add.6 of 17 June 1996), which monitors the implementation of the International Covenant on Civil and Political Rights, that a landmark amendment to the Constitution has provided for 30 per cent of all elected offices in local bodies, whether in rural or urban areas, to be reserved for women. The Committee requests the Government to provide it with a copy of the amendment.

3. The Committee is addressing a request directly to the Government on other points.

Islamic Republic of Iran (ratification: 1964)

1. The Committee takes note of the Government's detailed report and of the documents attached to it. It also notes the discussion in the 1997 Conference Committee on the Application of Standards, which took note of the technical assistance mission to the country undertaken by the Office in April 1997.

2. The Conference Committee's discussion centred on the ongoing issues of sex and religious discrimination in employment and occupation, as well as that Committee's suggestion, made during its 1996 discussion, that the Government accept a direct contacts mission to examine all aspects of the outstanding questions. It also referred to recent comments concerning sex, religious and political discrimination in employment, presented by the World Confederation of Labour (WCL), to which the Government had replied, and by the International Confederation of Free Trade Unions (ICFTU), which had arrived during the Committee of Experts' previous session and thus had as yet received a reply. The Conference Committee took note of the explanations provided by the Government, inter alia, for not accepting the offer of a direct contacts mission and noted with concern that in spite of concrete initiatives and the time which had elapsed, violations of the provisions of this Convention subsisted. It stated that additional information was needed, in particular in the area of job offers and the criteria applied by the competent authorities to declare certain groups illegal. It strongly urged the Government to accept the direct contacts mission, in order to be able to register rapid and noticeable progress. It decided to place the case in a special paragraph of its report.

3. The Government states, in its report, that it was unfortunate that the Conference Committee was manipulated and misused as a forum for politically motivated and unfounded accusations. It explains the technical assistance received from the Office. First, given the importance of the involvement of the legislators in promoting the application of the Convention, members of the Parliamentary Labour and Social Affairs Commission had a three-day briefing session at ILO headquarters in January 1997. Second, the April 1997 national tripartite training seminar carried out by the Office in Tehran discussed a number of fundamental ILO Conventions, in particular Convention No. 111, followed by technical meetings to discuss the national mechanisms of implementation of the Labour Code, including the non-discrimination provisions, visits to other ministries and departments involved in promoting women and field visits to two of the largest factories in the greater Tehran area. Third, the International Institute for Labour Studies of the ILO offered an academic internship for research on the legal aspects of new developments in the field of fundamental workers' rights. Fourth, assistance was received for the translation of major ILO Conventions and documentation concerning them. The Government expresses its concern that this technical cooperation — a new and appreciated element in its relationship with the supervisory system — was ignored by the Conference Committee, especially as

the Committee of Experts itself had noted the Government's approach of using technical assistance to overcome difficulties in applying the Convention.

4. Regarding the proposed direct contacts mission, the Government recalls that, last year, it explained that the situation did not call for such a mission in that the extensive information supplied in recent government reports had solved the problem of lack of information on which the suggestion of direct contacts had been based. It hopes that the Committee of Experts understands that technical assistance can better serve the objectives of the Convention in the present situation in which the Government is cooperating in the supply of information and in welcoming Office participation in promoting the application of the Convention.

5. The Government considers that the document attached to the ICFTU communication is a propaganda paper, full of distortion of facts, falsifications and fabricated quotations, and calls into question the tenets of one of the divine religions, namely Islam. The Government expresses surprise that the ICFTU, which is a highly credible international body, transmitted the document to the Office given the intentions of the sources behind that document. It nevertheless addresses the general allegations of discrimination in employment on the bases of sex, religion and political opinion by referring to the replies it gave in its previous report in relation to the WCL communication. As the issues raised by the ICFTU parallel the comments that have been made by the Committee for a number of years, the Committee examines them below, by subject-matter.

6. The Government describes the general context following the presidential election of May 1997, pointing out that the election campaign had involved discussion of subjects relevant to the Convention. President Khatami's platform included strengthening of institutions of civil society, the rule of law, popular participation and promotion of women's participation in political, economic and social activities. According to the Government, his large victory was a clear manifestation of the democratic choices the people are making. The Government states that there is a clear government policy on promoting equal opportunity and enhancement of the role of women; various committees and special advisory posts have been set up in all major government institutions with the aim of incorporating women in all government activities; over 60 women's non-governmental organizations are active in the country; and there is dynamic public debate on the rights, role and participation of women.

7. *Discrimination on the basis of sex.* The Committee notes from the Government's report that women's employment has continued to increase in all sectors of the economy, particularly in scientific and specialized occupations (1986: 508,000 women employed in salaried posts and 409,000 in non-wage employment; 1991: 723,000 in salaried posts and 414,000 in non-wage employment, according to the Iran Centre of Statistics). One reason for this, according to the Government, is its expansion of higher education facilities (1991: 469,098 women held university degrees; 1996: 888,180). *The National Report to the Fourth World Conference on Women* (Beijing, 1995; copy supplied in English) shows that, of the economically active female population in 1976, 13 per cent were employed in professional, technical and scientific or research jobs, which grew to 32.8 per cent in 1986 and 39.7 per cent in 1991. Women's employment by economic sector has increased in services and declined in agriculture and industry. Women's employment in the public sector doubled between 1981 and 1991, with the Ministries of Health and Education being the largest employers of women. The number of women in management and decision-making positions is also on the rise: for example, two women have been appointed to the posts of Vice-President and Advisor to the President

respectively; several women hold senior public administration posts as Deputy Ministers and Directors-General; and many women are members of academia and heads of university departments. Of particular interest is the number of women in the judiciary: 3,154 in 1996, with several women sitting as judges (Judges of Investigations, Head of the Judiciary Branch, Deputy Heads of District or Provincial Judiciaries) following the implementation of the 1995 Act on Appointments to the Judiciary already noted by the Committee. There are 185 women attorneys. The Government supplies numerous press clippings attesting to the publicity given within the country to these women's appointments.

8. The Government also describes the activities and results obtained by the Bureau for Women's Affairs of the Office of the President. These include, among others: the creation of a Commission on the Employment of Women (composed of representatives of the Ministries of Labour, Industry, Agriculture, Cooperatives, Construction and the State Administrations of Plan and Budget, Administrative and Recruitment Policy, Social Security, Welfare and Handicraft Industries); formulation of the National Plan of Action for Women (copy supplied in Farsi); preparation of the National Report on Women presented to the Fourth World Conference on Women; support for the establishment of rural women's cooperatives; guidance and assistance to women facing unemployment problems and inadequate capital resources for self-employment; publishing and disseminating a booklet publicizing income-generating activities of women and statistical data on the social and economic situation of women. The Government repeats the comment made in its previous report that the Office might contribute to this work with advisory missions. The Government also supplies a copy (in English) of the progress report on the implementation of the Beijing Declaration and Platform for Action (March 1997).

9. With reference to the ICFTU's comments on section 1117 of the Civil Code, the Committee notes that the Government repeats that section 1117 (a husband may bring a court action to object to his wife taking up a profession or job contrary to the interests of the family or to his wife's or his own prestige), which dates back to 1928, should be read in the light of the more recent 1975 Act on the Protection of the Family, which extends this right to object to the employment to wives as well as husbands (sections 8 and 18(7), copies supplied in Farsi). Since this right to object is available to both spouses irrespective of sex, the Government states that it is non-discriminatory. The Committee asks the Government to inform it in future reports of developments regarding the revision of section 1117, and to supply information on any cases where a husband uses this particular provision to limit the job opportunities of his wife and vice versa.

10. The ICFTU communication also refers to the obligatory dress code for female public servants — and not males — violation of which is punishable, under sections 10 and 13 of the 1987 Act relating to administrative infringements, by administrative sanctions ranging from warnings to termination of the public employment, with the possibility of criminal sanctions including physical punishment at the discretion of the competent tribunals. The Government's report does not comment directly on this question. The Committee recalls paragraphs 42 and 186 of its 1996 Special Survey on equality in employment and occupation where it discussed the balance that needs to be struck between freedom to observe religious edicts and the requirements of trades and occupations, taking care to avoid arbitrary repercussions on employment and occupation particularly in the public service. The Committee asks the Government to inform it how this requirement is implemented in practice, in particular with an indication as to whether female civil

servants have received physical or other punishment for being improperly veiled when in the workplace or journeying to and from work.

11. *Discrimination on the basis of religion.* The ICFTU document mentions a number of laws, as well as advertisements for student places and job vacancies published in the daily press throughout 1995, which refer generally to the requirement of belief in Islam or one of the constitutionally recognized religions and, at times, "faith in the Islamic Revolution". The Committee notes that the ICFTU is alleging that discrimination pervades all aspects of Iranian society and, therefore, education and training and employment and occupation. The Committee notes that the Government, in its reply, supplies statistics on the active population, employment and school profiles of religious minorities (Christians, Jews, Zoroastrians and other religions). On the basis of this, and other details provided in past reports, the Government stresses that religious minorities benefit from the national policy of non-discrimination in employment and occupation and are employed in both the public and private sectors. Regarding the alleged discrimination in job offers, the Government states that there is no preference for Muslims. In view of all the information supplied, it appears that, for the recognized religious minorities, efforts have been made to improve the employment situation. The Committee recalls, however, the principle set out in *Article 1, paragraph 2, of the Convention* and in paragraphs 118 to 122 of its above-mentioned Special Survey regarding the inherent requirements of a particular job and their interplay with religious requirements, even in a country with a state religion. Many of the examples given by the ICFTU, for instance, relate to situations such as student places for meteorological studies, for which religious requirements would not appear to be justified.

12. The Committee must express its deep regret that, once again, the information supplied by the Government does not throw light on the situation of the Baha'is who, as noted in observations addressed to the Government for a number of years, have suffered discrimination on the basis of religion in access to employment, especially public service posts, and in terms and conditions of employment. This is of particular concern since the Committee had already, in its previous observation, recalled the findings of the United Nations Special Rapporteur on the question of religious intolerance, who visited the country in December 1995 and reported "instinctive rejection" towards the Baha'i community on the part of Iranian officials with whom he met (UN document E/CN.4/1996/95/Add.2 dated 9 February 1996). As noted in its last observation, the Committee refers the Government to paragraph 41 of its 1996 Special Survey on employment and occupation and requests it to provide details in its next report on the employment of members of the Baha'i religion in public service posts where particular religious beliefs are not inherent requirements of the job to be done. It also requests the Government to communicate information on the employment of members of the Baha'i community generally.

13. *Discrimination on the basis of political opinion.* The ICFTU document lists laws and press advertisements which allegedly favour adherents of the State's religious and political regime and discriminate against persons who may hold different ideological beliefs. It also makes some general allegations concerning the role of propaganda which go beyond the scope of the Convention. The Committee notes from the Government's report that the Constitution provides for the freedom to form political parties and that the Labour Code does not impose political or religious criteria in appointments to the various mechanisms created under the Code, such as Islamic Labour Councils. The Committee refers to its comments on the inherent requirements of particular jobs outlined above.

14. In addition to the specific recommendations made above, the Committee considers that the time has come in its dialogue with the Government to request it, as has

the Conference Committee albeit in a broader context, to consider accepting a direct contacts mission so as to have at its disposal complete information on the situation of religious discrimination in the country, in particular as regards the educational and employment opportunities of the Baha'is and other minorities. It hopes that the Government will be in a position to respond positively to this suggestion, especially now that the new Administration has taken office, this having been mentioned by the Government representative during the Conference Committee discussion. The Committee also hopes that the report will contain full details on the ongoing measures to improve the situation of women workers and the training opportunities available to girls and women.

Iraq (ratification: 1959)

The Committee notes that the Government's report does not contain replies to its previous comments. It must therefore repeat its previous observation which was worded as follows:

> 1. With reference to its previous comments relating to the application of *Article 2 of the Convention* in respect of linguistic and ethnic minorities in the country, the Committee recalls that this provision prescribes the formulation and application of a national policy to promote equality of opportunity and treatment in respect of employment and occupation and that, to implement the Convention, the legislative provisions in force must be accompanied by specific action, set forth in a precise manner, for implementing the principles of equality. The Committee notes that the Government restricts itself to repeating the legislative provisions in force and gives no indication on their practical application. It therefore requests the Government, once again, to supply detailed information on the application of a national policy on promotion of equality of opportunity and treatment in employment.
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> 2. The Committee particularly requested information on the application of Article 2 of the Convention in respect of citizens belonging to the country's ethnic and linguistic minorities, such as the Kurdish and Turkoman minorities. It requested the Government to provide information on the extent to which these citizens were included in a national policy of promotion of equality of opportunity and treatment, noting that this issue had also been discussed by other bodies within the United Nations system, including the Committee on the Elimination of Racial Discrimination. In 1993, the Conference Committee had expressed deep concern about these minorities and asked the Government to provide information on their situation in practice and on how they were guaranteed equality of opportunity and treatment. Since then, the Government has not sent sufficiently precise and specific information to allow the Committee to form an opinion on the situation. Furthermore, it notes that at its 45th Session in August 1996, the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a resolution deploring the situation prevailing in the Kurdish and Shiah regions of the country.
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> 3. The Committee notes that in its most recent report the Government mentions again the constitutional and legislative texts guaranteeing equality to all citizens, and the application of policies designed to implement these texts, without further details. The Committee would be grateful if the Government would supply detailed information concerning these policies and the measures taken, their nature and the results obtained in guaranteeing equality of opportunity and treatment to the Kurdish and Turkoman minorities. It also requests it to provide information on how the Convention is applied to other minorities such as the Shiah and Assyrian minorities.
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> 4. As regards the employment of women, the Committee recalls that resolution No. 480 of 1989 concerning the employment of qualified women in the state administration and the socialist and mixed sectors, which prohibits certain occupations for women, was suspended by Decision No. 76 of 2 May 1993, of which the Government sent a copy with its most recent report. The Committee notes that pursuant to this text, another resolution will decide on the fate of resolution No. 480, namely, whether it will be repealed or reinstated.

The Committee requests the Government to inform it of the ultimate status of this resolution which prohibits access by women to certain occupations.

5. With regard to the statistics requested on distribution of men and women in employment, the Committee notes the tables transmitted by the Government on the vocational training courses held in 1994 by the General Federation of Iraqi Women and the people's training centres. The Committee also requests the Government to provide tables showing the proportion of men to women on these courses as well as statistics on the number of women occupying posts of responsibility in the public sector, in proportion to men, and their classifications. It also requests the Government to indicate whether programmes designed to promote employment of women have been implemented or are envisaged, and whether concrete results have been obtained in this direction.

The Committee hopes that the Government will submit detailed information in its next report.

Libyan Arab Jamahiriya (ratification: 1961)

1. The Committee notes that in response to its repeated requests for information on how Act No. 20 of 1991 on the promotion of freedom ensures that the principle of non-discrimination in employment and occupation laid down in the Convention is applied in practice, the Government merely states, in its brief report, that during the period in question there were no complaints or legal proceedings concerning discrimination in employment and occupation because there is no such discrimination. The Committee is obliged to repeat the comments it made in its previous direct request, namely that it is difficult to accept statements to the effect that the application of the Convention gives rise to no difficulties, when no other details are given on the contents and methods of implementing the national policy on the promotion of equal opportunity and treatment (see paragraph 240 of the 1988 General Survey on equality in employment and occupation). Furthermore, as the Committee pointed out in paragraph 165 of its 1996 Special Survey on equality in employment and occupation, within the meaning of the Convention anti-discrimination provisions alone — whether in Constitutions or other legislation — are not enough to implement effectively the principles of equality of opportunity and treatment. There must also be a genuine policy to *promote* equality of opportunity and treatment in employment. Consequently, the Committee again asks the Government to provide detailed information on the practical effect given to Act No. 20 of 1991 which, according to the Government, is the basis of the national policy to combat all discrimination on the seven grounds set out by the Convention in *Article 1, paragraph 1(a)*. Please indicate, for example, how the education and information of the public on the national policy to combat discrimination are ensured or encouraged; and the measures taken to obtain the cooperation of employers' and workers' organizations in promoting the acceptance and implementation of the Act.

2. The Committee notes the information supplied by the Government in its report to the Committee on the Elimination of Discrimination Against Women (United Nations document A/49/38 of 12 April 1994) and that Committee's observations on the report, to the effect that it was not possible to speak of equal rights of women and yet to maintain sexual stereotypes by insisting on the role of women as housekeepers. The Committee again asks the Government to provide information on the training provided for women. It would be grateful if the Government would indicate, in particular, whether through training women have access to all types of work and sectors of production, and not only those corresponding to the traditional stereotypes of "women's work".

3. The Committee notes that the Government's report contains no reply to the other points raised in its previous direct requests, and urges the Government to ensure that its next report provides detailed answers to the following questions:

(a) What measures have been taken to give effect to Decision No. 164 of 1988 of the People's General Committee concerning the system of employment of Libyan women and Act No. 8 of 1989 concerning the right of women to have access to the magistrature?

(b) With regard to each of the seven grounds of discrimination prohibited by the Convention, and particularly sex, how is non-discrimination ensured both in access to the public service and during the course of a career in the public service?

(c) Please provide copies of reports which illustrate the implementation of the principle of equality of opportunity and treatment between men and women with regard to access to employment and terms and conditions of employment in both the public and private sectors.

Mauritania (ratification: 1963)

1. The Committee recalls that it is ensuring the follow-up to the recommendations made in 1991 by the Committee established to examine the representation made by the National Confederation of Workers of Senegal (CNTS), under article 24 of the ILO Constitution, alleging failure to apply the Convention, in particular to black Mauritanian workers of Senegalese origin whose employment was adversely affected following the conflict with Senegal in 1989. The Committee is therefore monitoring whether appropriate measures are implemented to compensate for the harm done to the Mauritanian nationals who were subjected to discrimination, by reintegrating such persons into their employment and re-establishing their rights in this area. The Committee is also kept informed of the progress made in the implementation of the decisions adopted in 1993 by the Joint Mauritanian-Senegalese Committee in respect of retirement pensions and wage arrears. The Committee notes with interest that a number of the workers affected by the events of 1989 have recovered their rights in respect of retirement pensions. Since the Government has not replied to the other points raised in its previous observation, the Committee reiterates that it would like the Government to provide: (a) statistics on the number of workers, in particular public servants and state employees, who have been reinstated in their jobs as part of the Government programme for the occupational reintegration of the workers who fell victim to the events of 1989; (b) information on any payments of wage arrears made to these workers; and (c) information on the administrative and legal appeals lodged by workers who consider that they suffered prejudice in these areas and, where appropriate, copies of the decisions taken.

2. The Committee is addressing a direct request to the Government on other points.

Mozambique (ratification: 1977)

1. The Committee notes the information contained in the Government's reports, in particular its reply to the Committee's previous direct requests concerning the need to repeal certain provisions of Decree No. 14/87 of 20 May 1987 to approve the general conditions of service of public servants, which allowed for discrimination in public service employment on the basis of political opinion. It notes with satisfaction from the Government's most recent reports that the provisions in question (sections 41(2)(b), 74 and 79) of that Decree No. 14/87 were amended by Decree No. 47/95 of 17 October 1995, eliminating any requirements based on political opinion or "revolutionary participation"

as a condition for employment. It also notes that Annex I, No. 11, of Decree No. 14/87 has been amended so as to suppress the references to "the Socialist Motherland" from the text as well as the requirement of "the revolutionary commitment" from the text of section 74.

2. The Committee also notes with interest, in relation to its previous direct requests which had observed that not all the grounds of discrimination laid down in *Article 1, paragraph 1(a), of the Convention* are expressly mentioned in article 66 of the 1990 Constitution (which does not expressly mention political opinion), the Government's clarification that section 3(1) of the 1985 General Labour Act contains the specific legislative prohibition on discrimination in employment based, among other things, on political opinion. Furthermore, the Government's reports point out that, in the state administration, criteria of political or revolutionary nature are no longer applicable for admission to posts or for promotion to managerial positions.

3. In a previous direct request, the Committee noted the Government's references to the economic difficulties which the country was undergoing and which hindered the collection of the information requested concerning, in particular, positive measures to promote equality of women in access to training and employment. The Committee suggested, in view of the establishment under Decree No. 7 of 9 March 1994 of a tripartite labour advisory commission, that the secretariat of the commission should be approached with a view to collecting this information. In this connection the Committee takes note of the information provided by the Government to the relevant ILO Multidisciplinary Team in August 1997, to the effect that the statistical gathering system in the country is in need of a thorough restructuring in order to be able to adjust to the realities of a market economy. The Committee recalls that labour statistics are an invaluable tool to monitor effectively the national policy in place to eliminate discrimination and improve employment equality in the labour market of any given society. It reminds the Government that the Office remains at its disposal, if requested, to provide technical assistance in the field of labour statistics or labour administration to help in compliance with the provisions of the Convention.

Nepal (ratification: 1974)

1. In previous comments, the Committee had expressed concern over certain provisions of the civil service legislation which appeared to permit discrimination in employment on the basis of political opinion by providing that civil employees may be removed or dismissed from service for, inter alia, participating in politics. In its previous observation, the Committee noted with regret that the new Civil Service Act, 1993, stipulates that a civil employee (defined as "any person holding office in any post of the civil service") may be removed from service in case he actively participates in partisan politics (section 61). The Committee also noted that a similar prohibition is contained in other legislation: the Municipality (Working Arrangements) Regulations, 1993 (which govern the staffing arrangements and functions of municipal employees) and the Village Development Committee (Working Procedures) Rules, 1994.

2. The Committee regrets that the Government's report contains no comment on this matter. Accordingly, the Committee refers again to its previous explanation concerning the limitations which should be placed on a ban to participate in politics, where it indicated that, although it may be admissible for the responsible authorities to bear in mind the political opinions of individuals in the case of certain higher-level posts which are concerned directly with implementing government policy, it is not compatible with the Convention for such conditions to be laid down for all kinds of employment in general.

The Committee urges the Government to take steps without delay to bring all relevant legislation into line with the Convention, and to supply details in its next report on the measures taken in this respect.

3. Also in its previous comments, the Committee had sought assurances that sections 10 (those found guilty by a court of any criminal offence involving "moral turpitude" cannot be appointed to any post of the civil service) and 61(2) ("moral turpitudes" constitutes grounds for removal or dismissal from service and disqualification from government service in the future) do not amount to discrimination on the ground of political opinion. The Committee had, however, noted with interest that section 69 of the Act provides for the formation of an Administrative Court to hear appeals against "orders of departmental punishment".

4. In its report, the Government states that it has examined in depth the issues raised by the Committee concerning the need for a clearance report in relation to an appointment to the civil service and gives its assurance that the cited provisions of the Civil Service Act are meant to ascertain only that a public servant is not involved in any serious criminal activities involving "moral turpitude". The Government states, furthermore, that no discrimination is made in this area on the basis of political ideology, sex, creed, caste or religion. The Committee welcomes the Government's comments and, with a view to settling this matter, requests the Government to provide in its next report indications of the way in which the term "moral turpitude" is defined under the criminal legislation, and to provide examples of any cases of the non-appointment of a candidate or dismissal of a civil servant on the basis of conviction for such an offence.

5. The Committee is raising other points in a request addressed directly to the Government.

New Zealand (ratification: 1983)

1. Further to its previous observation, the Committee notes the detailed information provided by the Government in its report. The Committee has also noted the comments of the New Zealand Council of Trade Unions (NZCTU) and of the New Zealand Employers' Federation (NZEF) and the Government's replies thereto. The Committee will consider, at its next session, the information provided in the report and by the NZCTU relating to equal pay between men and women in the context of the Government's application of Convention No. 100.

2. The Committee notes with interest the measures being taken by the Government to promote equality in the public sector, including the recent development of a policy on equal employment opportunity (EEO) in the public service up to the year 2010, which provides a framework for implementing EEO and establishes expected standards and outcomes for departments to achieve. In regard to a concern raised previously by the NZCTU — the enforcement of the *good employer* provisions of the State Sector Act, 1988 (personnel policies for fair and proper treatment of public employees) — the Committee notes that the Employment Tribunal has the power to order compliance with these provisions and that employees may be able to bring an action of breach of contract against the employer, as most public service employment contracts contain provisions which require the employer to be a "good employer" and follow EEO principles. In this regard, the Committee notes that, according to the NZEF, the courts and, in particular, the Court of Appeal, have not hesitated, since at least 1985, to read the *good employer* principle into the employer/employee relationship, where applicable. The NZEF states that an "implied principle" (that is, one that is applied through court decisions) can carry much weight in

a common law system and can result in the provision of an equally appropriate remedy as a principle which is given statutory form.

3. In previous comments, the NZCTU had expressed concern over the fact that, as a number of grounds of discrimination proscribed by the Human Rights Act, 1993, are not contained in section 28 of the Employment Contract Act, 1991, the opportunities for employees to seek redress on those grounds could be limited. The Committee had noted, however, that the Employment Tribunal had held that, while its jurisdiction in relation to complaints of discrimination is confined to the grounds set out in the Employment Contracts Act, it can hear evidence of discrimination on other grounds, in support of a claim of unjustifiable dismissal or of unjustified disadvantage (*Pooley v. New Zealand Society for the Intellectually Handicapped*, AT 102/95). In order to assess the extent to which claims of discrimination are, in practice, being pursued, the Committee asked the Government to provide information on any further cases pertinent to the Convention. In its report, the Government refers to a decision of 7 May 1997 by the Human Rights Complaints Review Tribunal (*Commissioner v. Transportation Auckland Ltd.*, CRT 14/96), which found there had been discrimination on the ground of political opinion in the case where an employee (a union delegate and member of the Communist Party) had been warned that his distribution of certain leaflets was detrimental to the interests of the company and could lead to dismissal for breach of contract. The Committee asks the Government to continue to provide information of this nature in its future reports.

4. In its present comments, the NZCTU states that the requirement for employers to be equal opportunity employers is exclusive to employment contracts in the public sector: there is no mandatory obligation for private sector employers to include EEO provisions in employment contracts, and very few contracts contain such provisions because many workers on individual contracts lack sufficient bargaining power to negotiate them. The Government indicates that a range of measures are taken to address the complex social factors regarding EEO and that two initiatives — the EEO Trust and the EEO Contestable Fund (to which the Committee has referred previously) — aim specifically at changing employer behaviour. The NZEF also describes a number of efforts undertaken to promote the concept of EEO in the private sector. Referring to the EEO Trust and the Contestable Fund, the NZCTU states that these measures are a token response to the promotion of employment equity, that they are more concerned with processes than results and work with employers, rather than in a tripartite manner. The Government states that employee organizations are not excluded from access to funding under these initiatives. While noting that some indication is provided in the report concerning the extent to which EEO provisions are contained in collective employment contracts covering 20 or more employees, the Committee requests the Government to provide an assessment, even in general terms, of the extent to which individual employment contracts in the private sector contain such provisions. The Committee also asks the Government to continue to provide information to demonstrate the extent to which equal opportunity and treatment in employment is being enjoyed by women and ethnic communities (particularly Maori and Pacific Island people) in the labour market.

5. In this connection, the Committee notes from the statistics in the Government's report, some positive indications, including that women's participation in employment increased by 17 per cent between 1991 and 1997 and that females increased their participation rate in the legislators, administrators and managers category by 6.5 per cent in the 12 months to March 1997. However, it also notes the information provided by the NZCTU indicating that women comprise the majority of workers employed in low-paid, part-time or casual jobs. While acknowledging that many complex, interrelated factors

beyond the strict scope of the Convention also play a part in determining progress in this area, the Committee recalls the importance of a general context of equality, as highlighted in paragraph 305 of its 1996 Special Survey on equality in employment and occupation. It trusts that the Government, in cooperation with the NZCTU and the NZEF, will remain attached to its avowed commitment to promote greater equality in the labour market by taking a comprehensive approach to the matter.

Pakistan (ratification: 1961)

1. In previous comments, the Committee has raised a number of concerns with regard to the application of the Convention. These concerns were shared by the Pakistan National Federation of Trade Unions and the All-Pakistan Federation of Trade Unions in comments made by each organization in 1993, as well as by the Conference Committee in its 1995 discussion.

2. *Discrimination on the basis of religion.* For some years, the Committee has drawn attention to the Anti-Islamic Activities of the Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance (No. XX of 1984), which added to the Penal Code provisions involving sentences of imprisonment for up to three years for any person of these religious groups who, inter alia, preaches or propagates his faith, whether this be by spoken or written words, or by visible representation (sections 298B and 298C). Section 295C, commonly referred to as the "Blasphemy Law", was incorporated into the Penal Code in 1986. This section provides that anyone guilty of defiling the name of the Prophet Mohammed is to be punished with death. In its report, the Government states — as it has on previous occasions — that the substantive impact of the restraints imposed by the Ordinance on Ahmadis is not onerous as the restrictions concern only the public exercise of certain practices. The Government reiterates that the religious practices of the Ahmadis may be observed, so long as they are carried out in private without causing affront to Muslims. The Government states, moreover, that, as the Ordinance does not disqualify Ahmadis/Quadianis from any employment or occupation, it has no relevance to employment opportunities on the basis of religion or belief. On the question that the issue of passports to Muslims is subject to a declaration in writing that the founder of the Ahmadi movement was a liar and an imposter, the Government reiterates that such a declaration was necessary to prevent non-Muslims from obtaining passports which identify them as Muslims; and that, if an Ahmadi identifies himself or herself as such in the application form for a passport, they are not required to sign the declaration.

3. The Government's report also reiterates the indications provided previously concerning the freedom of persons of different religions to join the armed forces. According to the Government, this makes it irrelevant to supply statistical data on the number and percentage of Ahmadis/Quadianis serving in the army, as the Committee had again requested. The report provides further detailed information on the situation of minorities in general, including the number of seats reserved for those minorities in the National Assembly and the Provincial Legislatures, the financial support given to these minorities and the institutional arrangements set up to promote and safeguard the rights of minorities.

4. The Committee welcomes the initiatives taken by the Government to promote the well-being of the minorities in the country. It hopes that the Government will provide, in its next report, further information on the actual strategies carried out by the Minorities Affairs Division of the Federal Government and on the specific work of the Commission for Minorities. The Committee remains concerned, however, that the enjoyment of equality of opportunity and treatment in education and employment by certain of those

minorities, such as the Ahmadis, must necessarily be affected negatively by the measures described above. The Committee observes that non-discrimination in employment cannot exist in a vacuum, apart from other human rights. If a society condones intolerance of some form, it is inevitable that discrimination on that basis will be manifested in all areas, including employment. Despite the Government's repeated assertion concerning the safeguards afforded under articles 27 and 36 of the Constitution, the Committee is unable to accept that Ordinance No. XX of 1984 and the required passport declaration do not give rise to discrimination in employment within the meaning of the Convention. This view is supported by the 1995 Conference Committee discussion. In addition, the report of the Special Rapporteur to the United Nations Commission on Human Rights (UN document E/CN.4/1995/91 of 22 December 1994) stated that "... the blasphemy laws are said to help create a climate of religious intolerance and to promote acts of violence affecting the Ahmadi and Christian minorities and even Muslims". The Committee had noted previously that the Supreme Court, in 1993, had declared Ordinance No. XX of 1984 to be *in vires* with the 1973 Constitution of Pakistan. It also noted, however, that the Human Rights Commission of Pakistan recommended that measures be taken to ensure in practice the constitutional guarantee to every citizen to profess, practise and propagate their religion in full freedom and that the Supreme Court be asked to review its majority ruling on the Ordinance. These indications illustrate that the provisions in question have given rise to concern both within and outside the country.

5. Accordingly, the Committee hopes that the Government will review the relevant provisions of the Penal Code and, more particularly, sections 298B, 298C and 295C, and that measures will be taken to guarantee freedom from discrimination on the ground of religion, both in law and in practice, in all aspects of employment. The Committee also urges the Government to reconsider the declaration required for the issue of passports.

6. Once again, the Committee regrets that the Government has not seen fit to provide statistical data on the number and percentage of Ahmadis serving in the armed forces and the public service, as such data might serve to illustrate that equality of opportunity and treatment in employment is, indeed, accorded to this minority. Noting that work is under way to launch a major human rights project in the country in the course of 1998 — in which the Office will be involved — the Committee trusts that the Government and relevant national partners will take this opportunity to consider further and resolve this long-standing issue.

7. *Discrimination on the basis of sex.* The Committee notes with interest the information provided by the Government concerning the measures proposed to improve the status of girls and women in the Eighth Five-Year Plan (1993-98). The Committee also notes with interest the comprehensive Report of the Commission of Inquiry for Women (August 1997), which contains recommendations for action. Noting the concern expressed in that report over the illiteracy rate of females (the female illiteracy rate was estimated at nearly 80 per cent in 1990 and currently about 70 per cent of those without basic education are girls), the Committee requests the Government to indicate the measures being taken or contemplated to implement the recommendations in this area, as well as those concerning employment, which are contained in the report (Chapter Five: Employment and service laws). In relation to training for employment, the Committee notes that a project for establishing a national training and resource centre has been finalized. Please provide, in future reports, information on the progress of this initiative and on any others concerned with the training of women for employment.

8. *Conditions in special industrial and export processing zones.* In its previous comments, the Committee noted that the question of excluding the newly established

special industrial zones (SIZs) from the application of labour legislation was being examined by the tripartite task force on labour, constituted to suggest ways and means to bring national legislation into conformity with ILO Conventions. The Committee also referred to the situation in export processing zones (EPZs) which are not covered by labour legislation but where non-compulsory minimum social rules (adopted in 1982) apply. These rules, however, do not include guarantees against discrimination. In its reports under Conventions Nos. 87 and 98, the Government has stated, once again, that the recommendations of the task force concerning the exemption of SIZs from the application of labour legislation are under the active consideration of the Government. As concerns the only EPZ yet established in Karachi, where 80 per cent of the 60,000 workers are female, the Government states that the benefits that accrue to these workers are better than those of other workers. It also states that, since social taboos do not favour the unionization of women, these workers have not formed trade unions, but are not barred from forming associations. As the Government has provided no information on the means taken to ensure the application of the principle of the Convention, as requested on a number of occasions, the Committee trusts that this information will be provided in its next report. Please also indicate precisely how many workers are now employed in enterprises established in SIZs and provide information on the measures taken to ensure that the Convention is applied in practice to those workers.

Paraguay (ratification: 1967)

The Committee notes the information supplied by the Government in its reports.

1. *Discrimination on the ground of political opinion.* The Committee notes with interest that, according to the Government's report, section 95 of the Bill on the Status of Civil Servants and Public Employees which is now before the National Parliament would repeal Act No. 200 of 17 July 1970 which states that no public official may engage in activities contrary to public order or to the democratic system established by the Constitution which might permit discrimination on the basis of political opinion, contrary to *Article 1, paragraph 1(a), of the Convention*. The Committee requests the Government to supply information in its next report on the adoption of the Bill relating to civil servants.

2. The Committee had asked the Government to supply information on specific measures taken or contemplated to guarantee freedom of political opinion to all categories of workers in practice, and to protect them against discrimination in employment on the ground of political opinion. The Committee notes the Government's information on this subject according to which, under constitutional and legal provisions, efforts have been made to avoid discrimination in employment and occupation. It indicates that both in the public administration and in the judicial authorities there are many people occupying senior posts without belonging to the Government party. The Committee requests the Government to supply information on the results of any labour inspections which have reported discrimination on the basis of any of the criteria of the Convention and legal decisions on the matter, if any.

Philippines (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes with interest the adoption of Republic Act No. 7877 (the Anti-Sexual Harassment Act, 1995), which makes unlawful all forms of sexual harassment in the employment, education or training environment. The Committee also notes with interest

the issuance of Administrative Order No. 250, which lays down the Rules and Regulations implementing Act No. 7877 in the Department of Labor and Employment (DOLE). The Committee requests the Government to provide information on the practical application of the legislation, such as any reports issued by the Committees on Decorum and Investigation, established in the DOLE, and any statistics maintained on the number of complaints received by these Committees. The Committee also asks the Government to provide information on the implementation of the project to eliminate sexual harassment, developed by the Bureau of Women and Young Workers of the DOLE, in coordination with the ILO.

2. The Committee is raising other points in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Portugal (ratification: 1959)

1. The Committee notes with interest the detailed report and appendices sent by the Government, and the comments made by the Confederation of Portuguese Industry (CIP) reiterating its concern regarding the legislation in force on night work done by women in industry.

2. In its previous observation, the Committee noted that the social partners were represented in the Commission for Equality in Employment and Occupation (CITE) and therefore received information on the Commission's supervisory duties and the activities undertaken to promote the principle of equality. The Committee requested the Government to continue to provide it with information on the supervisory duties performed by the CITE and the General Labour Inspectorate to verify whether the legislation relevant to the application of the Convention is observed.

3. In this respect, the Committee notes with interest that from 1 June 1995 to 31 May 1997, the CITE delivered opinions on 33 cases of discrimination which helped to resolve a number of them. Furthermore, the Committee notes that the CITE also verifies, on a regular basis, the advertisements published in the main newspapers to ensure that they do not contain any discriminatory references; in the period under consideration it received 34 complaints of discrimination of various kinds. The report indicates that it is planned to give autonomy to the General Labour Inspectorate and to provide technical training for its staff in order to achieve more effective training methods so as to prevent and eliminate acts of discrimination in areas where they exist. Moreover, in the areas of employment and occupation positive action mechanisms have been planned which are to be implemented by the Institute of Employment and Vocational Training as a way of promoting equality of opportunity for women and men. Similarly, the Government indicates that the theme of equality of opportunity has been introduced into social dialogue; the work of the CITE has been given fresh impetus, especially with regard to the dissemination of information on legislation guaranteeing equality of opportunity for women workers and to monitoring of the principle of non-discrimination, including indirect discrimination, in the labour sphere; a follow-up group has been created to deal with the subject of equality in collective labour regulation instruments; and specific training activities have been developed for labour inspection officials on equality-related subjects. The Committee requests the Government to continue to provide information, in its future reports, on any progress made in the application of the Convention.

4. With reference to the comments made by the CIP and the Committee's request that it be informed of all measures adopted to bring its legislation into line with current practice in relation to the night work done by women in industry, the Committee notes the

Government's clarification according to which the prohibition of night work by women contravened the constitutional and legal principle of equality. The Government explains that there is no doubt that by virtue of section 7(2) of the Civil Code, the prohibition was repealed, in accordance with the general principle of the Portuguese legal system which provides that a repeal may be either tacit or explicit, as a result of the incompatibility of new legal provisions with previous ones. Furthermore, the Committee notes that by virtue of this repeal of the prohibition of night work done by women in industry, no instances of penalties imposed by the Labour Inspectorate or by the courts on industrial establishments employing women during the night have been recorded.

Romania (ratification: 1973)

1. The Committee notes the Government's report and the explanations it contains which answer the previous comments concerning the legislative and practical protection that exists against discrimination in employment on the basis of political opinion.

2. In its previous observation, the Committee noted that the 1995 Education Act was perceived by some workers' organizations to endanger the teaching and learning of the mother tongues of the country's ethnic minorities and thus to have an impact on the equal employment opportunities of members of the national minorities. The Committee requested from the Government detailed information, in addition to that already supplied, on how the Education Act is being applied in practice so that the Committee can assess whether the current language policy meets the cultural and economic needs of minorities while enabling them, if they so wish, to engage in trades and professions using their own languages.

3. The Committee notes with interest from the Government's report that the Emergency Ordinance of 10 July 1997 to amend and supplement the Education Act, in force as of the 1997-98 school year, changes certain of the provisions of the principal Act upon which the Committee had made comments. A new section 5(2) provides that "The State promotes the principles of democratic teaching and guarantees the right to differentiated education, on the basis of educational pluralism, for the benefit of the individual and of the whole society". The Committee notes in particular the following amendments: sections 8(1) ("Education at all levels is provided in the Romanian language. It shall also be provided, in accordance with the present Act, in the languages of the national minorities, and in the languages of international circulation"); 8(4) ("Both in state and private education, school documents, to be named by order of the Minister of Education, shall be in the Romanian language. Other school documents may be in the language in which the schooling was given"); 120(2) ("In primary education, the subjects 'History of the Romanians' and 'Geography of Romania' shall be given in the mother tongue, according to curricula and textbooks identical to those used in classes being taught in Romanian. At the junior and senior high school levels, these subjects may be taught, upon request, according to curricula and textbooks identical to those used in classes being taught in Romanian, with the obligation to transcribe and to assimilate the toponymy and Romanian names into the Romanian language"); 122 ("In public vocational, secondary and post-secondary specialized education, the language for teaching may be the mother tongue, with the obligation to assimilate the specialist terminology into the Romanian language"); 123 ("(1) In public university education, groups, sections, colleges, faculties and institutions with tuition in the mother tongue may be organized, upon request. In such case, assimilation of the specialist terminology into the Romanian language must be assured. (2) Higher education institutions will be encouraged to have multicultural structures and activities so as to promote harmonious inter-ethnic cohabitation and

integration at the national and European level. (3) Upon request, the training of Romanian-speaking specialists in national minority languages will be encouraged"); and 124 ("In education at all levels, admission and graduation examinations may be taken in the language in which the respective subjects are taught in accordance with the law").

4. The Committee also notes the statistics provided by the Government on the increase in the percentage of scholastic units having minority language tuition, in particular for the Hungarian speakers (from 4.4 per cent — of which 4.1 per cent are Hungarian-speaking — in the 1992-93 school year to 5.3 per cent — of which 5 per cent speak Hungarian — in the 1996-97 school year). The actual number of minority language school-goers decreased (from 241,355 in 1992-93 to 221,331 in 1996-97). It also notes that in 1996-97, 32,400 minority language students attended 65 senior high schools, but only about 6,000 (and those being only Hungarian- and German-speaking students) attended the 31 vocational or post-secondary training institutions, accounting for approximately 1.8 per cent of the total student body at this technical level.

5. The Committee recalls the importance of promoting equal access to vocational training set out in the Convention, which determines the actual possibilities of gaining access to employment and occupations. In its 1996 Special Survey on Equality in Employment and Occupation, the Committee observes that, while inequalities in this area rarely originate in legislative provisions that are directly discriminatory, indirect discrimination may arise out of practices based on stereotypes relating to minority groups and myths concerning their educational aspirations and abilities. The Committee accordingly requests the Government, on the basis of the data supplied showing the proportional imbalance in the education and training of minorities in relation to their numbers in the general population, to undertake studies into the educational opportunities available to them. Such research could assess how the 1997 amendments to the Education Act enhance opportunities for their access to higher and technical education, which in turn lead to better jobs. It asks the Government to inform it of any positive action measures taken to encourage members of the national minorities to avail themselves of the possibilities for mother-tongue education introduced by the above-mentioned provisions of the Education Act.

6. Regarding the employment opportunities of the Rom and the Hungarian-speaking minorities (which, according to the 1992 census, constitute 1.8 and 7.1 per cent of the active population respectively), the Committee, in its previous observation, noted the data on their economic and employment profiles and asked to receive more recent statistics so as to be able to assess the trend in their equal employment opportunities. It notes that, according to the 1996 data provided in the Government's report on the jobs held by the economically active population, the Rom and the Hungarian-speakers are both least represented in management and executive, administrative and economic posts (ethnic Hungarians hold only 3.2 per cent of such posts and Rom, only 0.7 per cent of such posts) and most represented in agriculture (ethnic Hungarians make up 26.2 per cent of the agricultural workforce and Rom, 34.8 per cent). The Government states that on 31 January 1997 it created the Department for the Protection of National Minorities (DPNM), under the Prime Minister. The Department has regional bureaux, whose functions include, inter alia: legislative initiatives; supervision — including the receipt and treatment of complaints — of the enforcement of the relevant laws; financial aid to groups of citizens belonging to national minorities; and the promotion and development of programmes for the maintenance and spreading of the ethnic culture, identity, language and religion of these minorities. The Council for National Minorities, noted by the Committee in past observations, will continue its advisory role with the DPNM. In the context of the DPNM,

the National Office for the Social Integration of the Rom has been established, and the 1997 programmes for this minority include a seminar on the prevention of discrimination against the Rom; round tables to find solutions to particular problems; publication of works on the lives of Roma personalities; and measures to encourage the employment of Rom in the public service. The Committee welcomes these institutional measures and asks the Government to inform it, in its next report, on the success of the initiatives of the DPNM and its Office for the Social Integration of the Rom, in particular details on any affirmative action measures taken to increase the number of Rom in public employment, in accordance with *Articles 3(d) and 5 of the Convention*.

7. *Article 2 of the Convention*. In previous observations, the Committee had requested information on the adoption of the Bill on National Minorities and on the work of the minority joint committees, created in the context of the above-mentioned Council for National Minorities, and referred to by the Government as forming part of the national policy for the elimination of discrimination in employment based on race, colour and national extraction. The Committee notes that, according to the Government's report, a new Bill on National Minorities is being drawn up, copies of which will be provided to the Committee once adopted. The Committee requests the Government to keep it informed of progress in the drafting of this new text, and looks forward to receiving a copy of it.

8. *Measures of redress*. For a number of years the Committee has been following up on the report of the 1991 Commission of Inquiry, in particular with regard to Recommendations Nos. 6 (requests for medical examinations made by persons who went on strike in 1987 and who have been subsequently rehabilitated by the courts) and 18 (rebuilding of the houses destroyed as part of the systemisation policy against certain minorities). Noting that the Government gives no further information on Recommendation No. 6, the Committee asks it to do so in its next report. Regarding the compensation for and rebuilding of destroyed houses, the Committee notes that, according to the Government, following the cessation of the systemization policy and under Act No. 18/1991 (already noted in previous observations), title to certain occupied land on which housing exists is now vested in dwellers enjoying usufruct and, in the majority of cases, this has benefited persons whose houses had been destroyed in the past and who moved to these lodgings. Other land in question which has not been built upon subsequently will also be restored, upon demand, to the former owners. The Committee requests the Government to keep it informed, in future reports, of the restitution of such property to the affected persons belonging to minorities. Also noting that, in past observations, it had been able to note quite a large number of cases where compensation had been granted to persons who took part in the 1987 strike which had been examined by the Commission of Inquiry, the Committee would be grateful if the Government would inform it in future reports of any new cases of compensation granted.

Rwanda (ratification: 1981)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. In its previous comments, the Committee had referred to section 5 of the Legislative Decree of 19 March 1974 respecting General Regulations for State Employees and section 6 of the Presidential Order of 20 December 1976 respecting Regulations for Personnel of Public Enterprises, which include among recruitment criteria the issuance by the communal authority to candidates of a certificate of good conduct, living and morals and loyalty to the authorities and national institutions. The Committee notes that the Government recalls the provisions of the above-mentioned Legislative Decree and indicates that there are no legislative or regulatory provisions that define the criteria on the basis of which the communal

authority can base a refusal or a grant of these certificates. The Government recognizes that this lacuna could give rise to irregularities and points out that the new authorities in the country can find a solution in conformity with the Convention. With this in mind, a draft of new public service regulations has been prepared and is being examined by the Government. The Committee asks the Government to transmit, with its next report, information on the measures taken to bring its legislation and practice into conformity with the Convention, and on progress made towards the adoption of the new public service regulations which would amend section 5 of the above-mentioned Legislative Decree. The Committee again draws the Government's attention to the fact that, if by virtue of *Article 1, paragraph 2, of the Convention*, it is permissible to take account of political opinion for certain high-level posts directly involved in the implementation of government policy, the same does not apply when criteria relating to political opinion are applied to all public employment or certain other occupations.

2. Referring to its previous comments on the refusal of communal authorities to issue certificates of good conduct, living and morals, required by the labour administration of persons seeking employment who are suspected of activities prejudicial to the security of the State, without appropriate legislative or regulatory bases, the Committee hopes that the next report will indicate the measures taken and the results obtained in ensuring that no one can only be refused employment for reasons linked to the security of the State within the limits of *Articles 1, paragraph 2, and 4, of the Convention* and subject to the right of appeal in Article 4. Please refer in this connection to paragraphs 134 to 138 and 104 of the Committee's 1988 General Survey on equality in employment and occupation.

3. The Committee is addressing a request directly to the Government on other points.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Saudi Arabia (ratification: 1978)

1. The Committee's dialogue with the Government concerning the application of this Convention has centred on: (a) section 160 of the Labour Code, under which "in no case may men and women co-mingle in the place of employment or in the accessory facilities or other appurtenances thereto"; and (b) access of women to vocational training for occupations which are not traditionally "feminine". While noting in its previous comments the Government's statements concerning the application of the Convention through Islamic law, the Shari'a, the Committee had pointed out that *Article 2 of the Convention* requires that each member State for which the Convention is in force declare and pursue a national policy to eliminate any discrimination based on, inter alia, sex in employment using methods appropriate to national conditions and practice. The Government described the social conditions which formed the background of section 160, explaining that it had no discriminatory intent and merely reflects the social behaviour by emphasizing that employers must obey traditions. The Government also replied that workers of both sexes are trained side by side in a variety of activities, many of which are not considered to be traditionally "feminine".

2. Regarding the training issue, in its latest report the Government stresses that Saudi women are convinced that their primary duty is to be wives and mothers, bringing up their children and looking after their homes, and that this benefits the family materially and educationally since most women have no financial need to work outside their home. The Government supplies examples, in addition to those given in previous reports, of occupations for which training is carried out with no discrimination on the basis of sex and supplies 1990 statistics on the numbers of men and women trained to become primary and intermediate-level schoolteachers (14,138 women and 12,406 men) and health rehabilitation professionals (57.5 per cent of trainees are women). It also provides 1994-95

data on the number of male/female university enrolments, where more women than men have chosen education faculties and natural sciences, the numbers being almost equal in the humanities. At the postgraduate level (total students numbering 7,006 of which 2,167 are women), male students outnumber females in all specialities except education and teaching and the humanities. At the level of vocational training institutes, the Government points out that 22 centres are training 1,480 girls in dressmaking and states that the competent authorities are keen to increase the centres' capacities. It is hoped that new training centres will be inaugurated with new areas of specialization. The Committee welcomes these data on the choice of training available to women and girls. The Committee recalls that it has been following up this issue not in an effort to redirect persons of one sex or the other into training they might not wish; the dialogue has been aimed, rather, at ensuring that, in accordance with the requirements of the Convention, both sexes have the right to *choose* in this domain, and that while no legislative restrictions impede free access to training for different occupations, the practice respects the legislative framework. The Committee stands assured by the Government of its seriousness in applying the national policy on non-discriminatory education and training.

3. Regarding section 160 of the Labour Code, which prohibits co-mingling of men and women in the workplace, the Committee notes the Government's re-affirmation that there is no discrimination on the basis of sex in practice and that the various sectors of work are open to Saudi women without being limited to certain traditionally feminine occupations or indeed to any specified occupation. According to the Government, they have entered many fields alongside men, such as in commerce, industry, education, medicine and related occupations, pharmacy and hospital management, and the audiovisual field. The Committee welcomes these statements concerning the practice in the country. It recalls that it has stated in past observations that the requirement in the legislation may result in occupational segregation according to sex if it limits women in fact to professions which are deemed suitable to their nature, or if it limits their access to certain professions. Noting that the latest information from the Government on the labour market indicates that the legislative ban on co-mingling has not hindered women's access to various occupations as they wish, the Committee requests the Government to continue to inform it of the jobs that women actually do in spite of section 160. It would be particularly interested in receiving data reflecting the number and level of women in the civil service, particularly in high-level grades, which the Committee had been seeking in previous direct requests.

4. The Committee is addressing a request directly to the Government on other points.

Sierra Leone (ratification: 1966)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. In its previous comment, the Committee had noted with interest that the new Constitution (Act No. 6 of 1991) no longer made provision for a one-party system and did not reserve certain high-level public offices for members of the recognized party, as had the Constitution of 1978. (The previous Constitution of 1961, which had included a general provision for the protection of fundamental rights and freedoms on most of the grounds of the Convention was suspended in 1968.) The Committee had also noted with interest that article 8(3) of the new Constitution directs state policy towards ensuring that every citizen, without distinction on any grounds whatsoever, should have the opportunity for securing adequate means of livelihood and adequate opportunities to secure suitable employment and that article 15 lays down certain fundamental human rights and freedoms for all individuals irrespective of race, tribe, place of origin, political opinion, colour, creed or sex. As there had been no

progress towards enunciating a national policy to promote equality of opportunity and treatment in employment and occupation, as required by *Article 2 of the Convention*, the Committee had hoped that, in the light of the new Constitutional provisions and, especially, those of article 8(3), the Government would proceed to formulate a national policy, in consultation with the tripartite Joint Consultative Committee.

2. In its reports, the Government states that, despite the suspension of the 1991 Constitution, the Government has a broad-based policy which ensures jobs for all who apply, regardless of sex, religion, ethnicity and political opinion. The Government also states that the Joint Consultative Committee has yet to make its final recommendations on a national policy. The Committee notes this information with concern. It recalls that in the 30 years since the Convention's ratification, the Government has reported consistently that no legislation or administrative regulation or other measures exist to give effect to the provisions of the Convention and that no national policy has been declared, pursuant to *Article 2*. With the suspension of the 1991 Constitution, there is no national legal instrument or formally declared policy in the country which provides any protection against discrimination. The Committee hopes that the Government will respect its obligations under the Convention. In particular, it trusts that a national policy on discrimination will be formulated, as required by the Convention, and that full details will be provided in the Government's next report, on the measures being taken and contemplated to apply the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Slovakia (ratification: 1993)

1. Referring to its previous direct request, the Committee notes with satisfaction that Act No. 451/1991, referred to as the "Screening Act" was repealed on 31 December 1996 for the reason, among others, that the Act was deemed incompatible with the provisions of the national Constitution and with Convention No. 111.

2. The Committee is addressing a request directly to the Government on certain other points.

Spain (ratification: 1967)

The Committee notes that the Governing Body at its 270th Session (November 1997) declared receivable a representation made by the General Confederation of Labour of Argentina (CGT), under article 24 of the ILO Constitution, alleging non-compliance by Spain with the Convention. In accordance with its usual practice, the Committee is postponing its comments on the application of the Convention pending the Governing Body's adoption of the conclusions and recommendations of the tripartite committee appointed to examine the matter.

Sudan (ratification: 1970)

1. The Committee notes the Government's statement in its report to the Human Rights Committee which monitors the implementation of the International Covenant on Civil and Political Rights (United Nations document CCPR/C/75/Add.2 of 13 March 1997) that for the first time in the history of the Sudan the principle of non-discrimination has been enshrined in the constitutional arrangements, in particular the Seventh Constitutional Decree. The Committee would like to receive a copy of this Decree, as well as information on its legal status and information on measures contemplated or taken to implement the discrimination provision.

2. The Committee notes, however, that the Government's report on this Convention has not been received. It hopes that a report will be supplied for examination by the

Committee at its next session and that it will contain full information on the matters raised in its previous direct request, which read as follows:

> 1. In its two previous observations, the Committee had requested full information on the practical application of section 6(c)(6) of Constitutional Decree No. 2 of 30 June 1989, under which a state of emergency was declared throughout Sudan, political parties and trade unions were dissolved, and measures may be taken to terminate the service of any public employee and every contract with a public office while preserving the rights to service benefits or compensation. The Committee notes that the Government's report contains no information on this point. The Committee draws the Government's attention to Article 4 of the Convention and to the need for measures intended to safeguard the security of the State to be sufficiently well-defined and delimited so as to ensure that they do not amount to discrimination based on any grounds proscribed in the Convention. It again refers to paragraph 136 of the Committee's 1988 General Survey on equality in employment and occupation, according to which, "the application of measures to safeguard the security of the State must be examined in the light of the bearing which the activities concerned may have on the actual performance of the job, tasks or occupation of the person concerned". The Committee hopes to receive full information in the Government's next report on the practical impact of the above-mentioned Decree.
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> 2. As no information has been supplied by the Government on the legal status of the position paper entitled "Concessional position on the issue of state and the religion during the interim period" of which the Committee was informed in May 1993, the Committee again asks the Government for information in this regard. The Committee also asks the Government to inform it of any progress towards a new Constitution which would, according to the position paper, be silent about state religion.
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> 3. The Committee would be grateful if the Government would supply, when available, a copy of the new Manpower Act referred to in its previous report, which according to the Government's information includes a provision giving express effect to the Convention.
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> 4. The Committee notes the information supplied by the Government on the work of the selection committees in the public service and the Government's statement that "the selection process to fill a public post is conducted through a free discussion based on qualifications, and is determined by examinations or interviews or both, depending on the work requirements and the various specializations". According to the Government's report, the section of the Public Service Act of 1991 where this is stated remains effective through section 18 of the Public Service Act of 1994. Noting also the Government's statement that the committees' decisions are taken on the basis of the principle of equal opportunities and without discrimination on the grounds of sex, religion or race, the Committee asks the Government for information on how respect for this principle in the selection committees' decisions is monitored, and on the procedure available for appealing against a decision where a person considers that he or she has been discriminated against on any of the grounds of the Convention.
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> 5. The Committee notes that the Government's most recent overall figures regarding university and secondary-school graduates selected for the public service in 1991 and 1992 differ from the figures supplied by the Government for the same years in its previous report, quoted, with reference to university graduates only, by the Committee in its March 1995 observation. According to the latest figures, of the 4,012 graduates in 1991, only 1,761 were women; but of the 4,037 graduates in 1992, 2,829 were women. The Committee asks the Government to provide similar statistics for 1993-95, showing, if possible, public service employees by occupations and level of responsibilities, disaggregated by sex and, if available, national extraction and religion.
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> 6. The Committee notes the statistics supplied concerning the number of participants in various courses offered at regional vocational training centres. However, it notes that the data contain no breakdown of participants by sex and origin as asked for by the Committee in its four previous direct requests to the Government. Referring to paragraph 247 of its above-mentioned 1988 General Survey, the Committee stresses the importance of having

> statistical analyses of the distribution of labour in the national economy so as to be in a position to identify de facto discrimination through, for example, occupational segregation based on sex, religion and race. Accordingly, the Committee would repeat its request for detailed statistical breakdowns, by sex and religion, of participants in the various vocational training centres.

3. The Committee is addressing a direct request to the Government on certain other points.

Uruguay (ratification: 1989)

1. The Committee notes the observations presented by the Association of Employees of the National Board of Electrical Power Stations and Distribution (AUTE) — Inter-Union Assembly of Workers/National Convention of Workers (PIT/CNT) concerning discrimination on the basis of sex which took place in the National Board of Electrical Power Stations and Distribution (UTE). It is alleged that because special social security standards are applied for women, women workers receive smaller amounts than men when they collect voluntary redundancy benefits.

2. The Committee notes that the Government has indicated that this situation has been denounced to the General Labour Inspectorate and is currently under examination. The Committee recalls the wide scope of *Article 1, paragraph 1(a), of the Convention* and Paragraph 2(b)(iv) of Recommendation No. 111 and requests the Government to inform it of the final results of the proceedings brought by the labour inspectorate in this case.

3. The Committee is addressing a request directly to the Government on other matters.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Angola, Antigua and Barbuda, Australia, Austria, Barbados, Belarus, Belgium, Bolivia, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Côte d'Ivoire, Croatia, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Iceland, India, Israel, Italy, Jamaica, Jordan, Kuwait, Lebanon, Liberia, Lithuania, Madagascar, Malawi, Mali, Malta, Mauritania, Mexico, Mongolia, Morocco, Nepal, Netherlands, Niger, Norway, Panama, Peru, Philippines, Poland, Romania, Rwanda, Saint Lucia, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Slovakia, Slovenia, Somalia, Sudan, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Togo, Trinidad and Tobago, Tunisia, Ukraine, Uruguay, Venezuela, Yemen.*

Information supplied by *Nicaragua* and *Zambia* in answer to a direct request has been noted by the Committee.

Convention No. 112: Minimum Age (Fishermen), 1959

Liberia (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 2, paragraph 1, of the Convention.* Further to its previous comments regarding the absence of measures imposing minimum age of 15 years for employment in fishing vessels, the Committee notes the Government's statement in its most recent report that it now

considers that Liberian Maritime Law and its sections 51(1) and 326(1) apply to fishing vessels, contrary to the position it had expressed since 1973 and the promises it had made to take measures to correct the situation. The Committee would be grateful if the Government would provide indications on the measures taken to apply the application of the provisions of the Maritime Law to fishing vessels.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 113: Medical Examination (Fishermen), 1959

Liberia (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Articles 2, 3, 4 and 5 of the Convention.* The Committee notes the Government's reply to the comments it had been making for many years on the need for legislation to give effect to Article 2 (requirement of a physical fitness certificate for employment on a fishing vessel), Article 3 (nature of the medical examination), Article 4 (period of validity of certificates) and Article 5 (possibility of a further medical examination). The Government indicates that it is the Liberian Requirements for Merchant Marine Personnel (RLM-118) which gives effect to the Convention. It further states that Liberian Maritime Regulation 10.325(2) gives effect to the other provisions of the Convention. The Committee refers to its comments under Convention No. 112 regarding the applicability of the Liberian Maritime Laws and Regulations to fishing vessels. It hopes the Government will also provide full explanations regarding the applicability of the Liberian Maritime Laws and Regulations to the medical examination of fishermen. The Committee would also be grateful if the Government would indicate whether consultations with the fishing-boat owners' and fishermen's organizations concerned, if they exist, had taken place prior to the adoption of the applicable laws and regulations on the nature of the medical examination and the particulars to be included in the medical certificate as required by Article 3, paragraph 1. In addition the Committee would be grateful if the Government would provide particulars on how due regard is had to the age of the person to be examined and the nature of the duties to be performed, in prescribing the nature of the examination as required by Article 3, paragraph 2.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Spain (ratification: 1961)

Article 4, paragraph 1, of the Convention. With reference to its previous comments, the Committee notes with satisfaction that Circular No. 20/94 issued by the Ministry of Labour and Social Security (Social Marine Institute) has amended Circular No. 12/93 on the medical examination of seafarers prior to their embarkation and establishes that the maximum limit of validity of a medical examination is one year for young persons under the age of 21, thereby ensuring that the Convention is applied.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Brazil, Uruguay.*

Convention No. 114: Fishermen's Articles of Agreement, 1959

Liberia (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee refers to its previous comments and asks the Government to provide full information on each provision of the Convention and each question in the report form approved by the Governing Body.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 115: Radiation Protection, 1960

Brazil (ratification: 1966)

The Committee notes the information supplied by the Government in its reports for 1995 and 1996.

1. *Articles 3, paragraph 1, and 6, paragraph 2, of the Convention.* In its previous observation the Committee noted that the Coordinating Committee for Protection concerning the Brazilian Nuclear Programme (COPRON) had been sent a proposal for amending the legislation in the light of the 1990 Recommendations of the International Commission on Radiological Protection (ICRP). The Committee notes that, in a report received in 1995, the Government stated that COPRON would meet shortly to begin work, on a tripartite basis, on a review of the maximum doses currently authorized. The Committee asks the Government to provide information on the stage reached in the work of COPRON and progress made. More generally, the Committee notes that, according to the information supplied by the Government in its 1996 report, the examination of the Basic International Basic Safety Standards jointly sponsored in 1994 by the IAEA, the WHO, the ILO and three other international organizations, is currently under way. The Government also indicates that it intends to apply these standards in the near future. The Committee therefore hopes that the Government will shortly be able to report the adoption of measures to ensure effective protection of workers and particularly of revised maximum permissible doses that conform to the 1990 Recommendations of the ICRP and the 1994 International Basic Safety Standards.

2. With regard to working conditions in the nuclear industry, on which the National Commission of Workers in Nuclear Energy (CONTREN) had commented, the Committee notes the Government's statement that the studies now under way concern three areas: nuclear installations — particularly temporary work performed in such installations — the storage of radioactive waste and the hospital sector. The Committee again asks the Government to provide information on the data collected in the course of the coordinated action undertaken with the social partners to assess the situation in the nuclear industry and the changes that need to be made. It also asks the Government to indicate whether the collective agreements revising working conditions, which the Government referred to in its previous reports, have been adopted and, if so, to send copies to the Office.

3. The Committee is addressing a request directly to the Government in which it again raises a number of points.

France (ratification: 1971)

1. *Review of maximum permissible doses and effective protection of workers in the light of new knowledge (Articles 3, paragraph 1, and 6, paragraph 2, of the Convention).* The Committee notes that the Government indicates that by the year 2000 the maximum permissible dose of exposure of workers to ionizing radiation currently in force will be replaced by a new limit of 100 mSv over five consecutive years, in accordance with the prescriptions of Directive 96/29/Euratom, adopted in May 1996. With reference to its previous observation and its 1992 General Observation, the Committee recalls that the International Commission on Radiological Protection (ICRP), in recommendations formulated in 1990, sets a limit of 20 mSv per annum averaged over five years provided that the actual dose does not exceed 50 mSv in any one year. Moreover, in 1994 the limits established by the ICRP were incorporated in the International Basic Safety Standards. The Committee hopes that the Government will soon be in a position to report the adoption of provisions in conformity with the dose limits mentioned in its 1992 General Observation, in the light of current knowledge such as that contained in the 1990 ICRP Recommendations and the 1994 International Basic Safety Standards.

2. The Committee is raising certain questions in a request addressed directly to the Government.

Ghana (ratification: 1961)

With reference to its previous comments, the Committee notes the Government's indication in its latest report that the issue raised by the Committee has been given consideration and the appropriate response is being prepared.

The Committee recalls that its previous observations read as follows:

> 1. In comments it has been making for over 15 years, the Committee has noted that protection against hazards due to radiation has only been provided by means of the non-binding Code of Practice for the Protection of Persons Exposed to Ionizing Radiations; the Committee had also taken note of the Government's indication that a Radiation Bill was being prepared in order to give legal effect to the Code of Practice. In its 1989 observation, the Committee noted the Government's indication that the Radiation Bill had still not been adopted, but that it would be given prompt attention upon the re-establishment of the National Advisory Committee on Labour. The Committee notes from the Government's report, received in 1991, that there has been no change in the application of the Convention.
>
> The Committee would call the Government's attention to its general observation under this Convention which sets forth the revised system of radiological protection adopted by the International Commission on Radiological Protection on the basis of new physiological findings in its 1990 Recommendations (Publication No. 60). The Committee would recall that, under *Article 3, paragraph 1, and Article 6, paragraph 2, of the Convention*, all appropriate steps shall be taken to ensure effective protection of workers against ionizing radiations and to review maximum permissible doses of ionizing radiations in the light of current knowledge. The Government is requested to indicate the steps taken or being considered in relation to the matters raised in the conclusions to the general observation, in particular as regards bringing the Radiation Bill under preparation into conformity with the present state of knowledge.
>
> The Committee hopes that the Radiation Bill with any necessary amendments will soon be adopted and that it also will ensure the application of the following provisions of the Convention which are not covered by the Code of Practice: *Article 9, paragraph 2* (instructions to be given to workers as to the precautions to be taken for their health and safety when working with ionizing radiations); *Article 13(a), (b) and (d)* (circumstances under which, due to the nature and/or degree of exposure, workers shall undergo appropriate medical examinations, employers shall notify the competent authority and shall take any

necessary remedial action on the basis of the technical findings and the medical advice); and *Article 14* (to ensure that no worker is employed or continues to be employed in work involving exposure to ionizing radiations contrary to qualified medical advice). The Government is requested to indicate the progress made in these respects.

II. The Government is requested to provide information concerning the methods by which application of the Code of Practice is presently supervised and enforced, as requested under *point III of the report form*, as well as any relevant extracts from official reports concerning the practical application of the Convention, as called for under *point IV of the report form*.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

India (ratification: 1975)

1. *Articles 3, paragraph 1, and 6, paragraph 2, of the Convention*. The Committee notes with interest the Government's indication, in its reports of 1994 and 1996, that the Radiation Protection Rules, 1971, are being revised by the Atomic Energy Regulatory Board (AERB) and will reflect the principles established by the International Safety Standards of 1994 which are based on the recommendations adopted by the International Commission on Radiological Protection (ICRP) of 1990. The Committee further notes with interest that the Government indicates that, in the meantime, new dose limits for occupational exposure, taking into account the IRCP Recommendations and the international standards, have been set by AERB in Safety Directives that have been supplied to all employers. As the Government states that these limits are fixed at 100 mSv for five years from 1 January 1994 to 31 December 1998, the Committee would be grateful if the Government would indicate whether, and how, these limits will be maintained after this date. It also requests the Government to supply a copy of the Safety Directives adopted by the AERB and the new Radiation Protection Rules as soon as they are adopted.

2. The Committee also notes that, in a comment attached to the Government's report of 1994, the All India Trade Union Congress (AITUC) underlines the lack of effective enforcement of the legislation on Radiation Protection by the AERB, due to organizational weaknesses. The AITUC also indicates that improvement is needed to ensure effective protection of temporary workers against ionizing radiation; to minimize occupational exposure (work planning and execution), and to conduct proper medical examination for early detection of occupational diseases. The Committee requests the Government to communicate any comments that it considers appropriate on the points raised by the AITUC, in the light of *Article 3, paragraph 1, Article 12 and Article 15 of the Convention*.

3. The Committee is raising certain questions in a request addressed directly to the Government.

Paraguay (ratification: 1967)

In its previous comments the Committee took note of resolution No.678 of 16 July 1979 which establishes standards concerning the risks related to the use of X-rays and radiotherapy in medical applications. The Committee asked the Government to indicate which activities, other than those covered by resolution No. 678, involve exposure to ionizing radiation and to provide detailed information on the measures taken or envisaged to ensure that the provisions of the Convention are applied to all workers exposed to ionizing radiation and that the maximum permissible doses are respected.

The Committee notes the information supplied by the Government in its last report to the effect that resolution No. 678 of 1979 has not been revised, the maximum permissible doses have not been reviewed, appropriate measures to ensure effective protection of workers against ionizing radiations have not been adopted either for health and safety or for exceptional situations or serious incidents, and that practical application is virtually impossible owing to insufficient human, technical and material resources. The Committee notes the Government's statement that an inspection of radiological protection standards in medical establishments revealed no irregularities.

With particular reference to *Articles 2, 3, paragraph 1, and 6, paragraph 2, of the Convention* the Committee again expresses the hope that the Government will soon be able to report the adoption of appropriate measures which ensure effective protection of workers exposed to ionizing radiation particularly with respect to the specific points raised in the conclusions of the general observation of 1992 (paragraph 35) and which comply with the maximum dose limits referred to therein, in the light of current knowledge as set out in the 1990 Recommendations of the International Commission on Radiological Protection (ICRP) and in the 1994 International Basic Safety Standards for protection against ionizing radiation.

Switzerland (ratification: 1963)

1. With reference to its previous comments, the Committee notes with interest the adoption of the Federal Act of 22 March 1991 and the Ordinance on Radiation Protection of 22 June 1994, which came into force on 1 October 1994.

The Committee notes with satisfaction that the Act establishes, in section 2, that it shall apply to all activities, installations, occurrences and situations likely to present a danger linked to ionizing radiation. Furthermore, section 36(1) of the Ordinance sets the maximum annual dose at 5 mSv for workers aged from 16 to 18 years and section 33(3) prohibits the assignment of persons under 16 years of age to work where there is exposure to radiation. These provisions bring the legislation into conformity with *Articles 2, paragraph 1, and 7, paragraphs 1(b) and 2, of the Convention*.

The Committee also notes with satisfaction that the new annual maximum doses set by the Ordinance on radiation protection for workers directly involved in radiation work correspond to the limits recommended by the International Commission on Radiological Protection (ICRP) in 1990 and reproduced in 1994 in the International Basic Safety Standards for Radiation Protection jointly sponsored by the IAEA, the WHO, the ILO and three other international organizations (20 mSv per year; or 100 mSv over a period of five consecutive years, provided that the dose of 50 mSv is not exceeded in the course of any one year). The Committee recalls in this connection that, in its 1992 general observation under this Convention, it drew attention to the new maximum permissible doses adopted in 1990 by the ICRP on the basis of new physiological findings, and emphasized that these recommendations have a bearing on the application of the Convention, in view of the references to "knowledge available at the time" and "current knowledge" in *Articles 3, paragraph 1, and 6, paragraph 2, of the Convention*.

2. The Committee raises other matters in a request addressed directly to the Government.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Argentina, Barbados, Belgium, Brazil, Denmark, Djibouti, France,*** *Germany, Guyana, Hungary, India, Latvia, Lebanon, Netherlands, Nicaragua, Switzerland, Syrian Arab Republic, Turkey, Uruguay.*

Convention No. 117: Social Policy (Basic Aims and Standards), 1962

Costa Rica (ratification: 1966)

Migrant workers. Further to its previous observation, the Committee notes with interest the information supplied in the Government's report, and in particular, the Government's comments on the report of the ILO mission on "The situation of migrant workers in Costa Rica", and a Joint Declaration concerning Labour Migration made in May 1996 in San José by the Labour Ministers of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama and the Dominican Republic. It notes with interest that the Government has been continuing its efforts to deal with matters relating to migrant workers of Nicaraguan nationality working in Costa Rica. It notes in particular that the Government is proposing a system of a seasonal labour card.

The Committee requests the Government to continue to supply information on the measures taken or envisaged to ensure the application of *Article 8 of the Convention*, with particular reference to developments concerning Nicaraguan migrants mentioned above.

Kuwait (ratification: 1963)

With reference to its previous comments, the Committee notes the information supplied by the Government in its report on the following points. It notes with interest the establishment by Ministerial Order No. 114 of 1996 of a tripartite committee to examine the provisions of the labour law in the light of international labour Conventions, and also the indication of the Government in its report that a draft law in conformity with international Conventions is being considered by the constitutional bodies in the country for adoption. The Committee would be grateful if the Government would supply information on any developments in this regard.

Migrant workers

Articles 6, 7 and 8, of the Convention. As to the application of *Article 6*, the Government states in the report that individual workers' wages differ for different considerations, including the necessity to cover the needs of the workers and their families. Regarding *Article 7*, the Government again indicates that there is no restriction on remittance of workers' savings to their home countries. The Committee notes this information and hopes that the Government will continue to supply information on the application in practice of these Articles, including measures taken in accordance with the recommendations of the technical advisory mission of the Office to Kuwait in November 1994, to cover issues related to foreign labour. The Committee requests the Government to supply a copy of any agreements entered into with foreign countries for the purpose of regulating matters of migrant workers *(Article 8)*.

Remuneration of workers

The Committee previously noted the Government's indications in the earlier report of measures taken to ensure the regular and timely payment of wages to workers *(Article 11)*, namely: Ministerial Order No. 108 of 29 June 1994 had extended the system of a bank guarantee, i.e. requiring the employer to deposit a financial guarantee to cover in case of non-payment or late payment of wages, to non-governmental activities, particularly those which the Ministry may deem appropriate, which is in line with the recommendation of the technical advisory mission of the Office; and Ministerial Order No. 110 of 7 January 1995 was issued to require the transfer of wages to a Kuwaiti bank on the prescribed date of payment. The latter Ministerial Order also corresponds to one of the recommendations of the above mission, which considered that payment of wages through bank accounts would make it easier to detect cases of default such as non-payment or delayed payment, in particular to foreign workers, and would also make it easier to find out whether the worker is working with the original sponsor or with someone else without necessary authorization. In the absence of the Government's response, the Committee again requests the Government to supply copies of these Ministerial Orders as well as information on their application in practice, with particular reference to migrant workers.

The Committee also notes the absence of response to its previous comments on minimum wages, and again asks the Government to indicate whether minimum rates of wages are fixed in consultation with representatives of the employers and workers *(Article 10, paragraph 2)*, and what measures have been taken to ensure the enforcement of such minimum rates *(paragraphs 3 and 4)*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Jordan, Kuwait*.

Convention No. 118: Equality of Treatment (Social Security), 1962

Barbados (ratification: 1974)

The Committee refers to its previous comments in which it pointed out that section 49 (in conjunction with section 48) of the National Insurance and Social Security (Benefits) Regulations of 1967 and section 25 of the Employment Injury (Benefits) Regulations of 1970, which deprive a beneficiary, when residing abroad, of his right to ask for his benefit to be paid directly to him at his place of residence, are contrary to the provisions of *Article 5 of the Convention*. The Committee would like to point out that under this provision of the Convention, Barbados, which has accepted the obligations for branch (e) (old-age benefit), branch (f) (survivors' benefit), and branch (g) (employment injury benefit), among others, must guarantee both to its own nationals and to the nationals of any other Member that has accepted the obligations of the Convention in respect of the branch in question, when they are resident abroad, direct payment of the benefit to which they are entitled under such branch.

In its report, the Government maintains its position that it will for the time being continue to progressively implement the provisions of *Article 5* by way of reciprocal arrangements. In this situation, the Committee cannot but once again draw the Government's attention to the fact that under this Article of the Convention the payment of long-term benefits (other than those of the type referred to in paragraph 6(a) of Article 2) shall be guaranteed as of right to beneficiaries resident abroad, even in the absence of a bilateral or multilateral agreement. Therefore, the Committee hopes that the Government will reconsider its position and will take the necessary steps in the near future to include in the legislation a provision ensuring direct payment of old-age, survivors' and employment injury benefits to all entitled beneficiaries at their place of residence.

[The Government is asked to report in detail in 1999.]

Bolivia (ratification: 1977)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 6 of the Convention* (Payment of family allowances in respect of children resident abroad). The Committee notes from the information supplied by the Government in its report as also from section 51 of Supreme Decree No. 22578 of 13 August 1990, that the Bolivian social security scheme no longer provides for the payment of family allowances as contemplated under Article 6 of Convention No. 118 and Article 42 of Convention 102 of which it accepted Part VII (Family benefit) when it ratified the Convention. The Committee therefore expresses the hope that the Government will be able to re-examine the situation with a view to re-establishing a scheme of family benefits which complies with Part VII of Convention No. 102 and that on that occasion full account will be taken of Article 6 of Convention No. 118, which specifies that each Member which like Bolivia has accepted the obligations of the Convention in respect of family benefit shall guarantee the grant of family allowances both to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention for that branch, in respect of children who reside on the territory of any such Member, under conditions and within limits to be agreed upon by the Members concerned.

The Committee draws the Government's attention to the availability of technical assistance of the Office.

Brazil (ratification: 1969)

Article 5 of the Convention (in relation to Article 10, paragraph 1). The Committee notes with regret that the Government's reports received in 1996 and 1997 do not contain any answer to the Committee's previous comments, which it has been making for more than 25 years now, concerning the need to include in the national legislation a provision guaranteeing the payment of long-term benefits in the event of residence abroad.

The Committee recalls that, contrary to this Article of the Convention, section 109 of Act No. 8213 of 24 July 1991 respecting social insurance provides that in the event of the absence of the beneficiary the payment of benefits shall be made to a substitute whose authority shall be renewed every six months. However, section 424 of the Regulations on social insurance benefits approved by Decree No. 83080 of 24 January 1979, which remained in force until the new regulations provided for under section 154 of the abovementioned Act were to be adopted, stipulated that the provision of the benefit due to the beneficiary residing abroad was effected under the terms of the agreement between Brazil and the country of residence of the beneficiary in question or, in the absence of such agreement, under the terms of the instructions adopted by the Ministry of Social Insurance and Assistance (MPAS). The Committee further recalls that in its previous report the Government has considered it unnecessary to adopt the said instructions, as the payment of benefits abroad was made on the basis of the bilateral agreements.

With regard to the present situation in law, the Committee notes, from the Government's report on Convention No. 19, that while new Regulations on social insurance benefits were approved by Decree No. 2.172 of 1997, section 203 of these Regulations contains exactly the same provision as section 424 of the old Regulations. As regards the conclusion of the bilateral agreements, it further notes, from the Government's reports, that new agreements providing for the payment of benefits abroad were concluded with Italy and Greece and revised agreements with Chile and Portugal. Thus, of the 37 countries which have ratified Convention No. 118, Brazil has concluded bilateral social security agreements only with Cape Verde, Italy and Uruguay. In the absence of such agreements with the other ratifying countries, the provision of Brazilian social security benefits to the beneficiaries residing in those countries could be effectuated, under the terms of section 203 of the new Regulations mentioned above, only if the instructions called for in this section are adopted by the MPAS. In the absence of such instructions, payment of benefits to the beneficiary residing abroad would continue to be made to his substitute in Brazil in accordance with section 109 of Act No. 8213. In this situation, the Committee would ask the Government to indicate whether any such instructions are, in fact, adopted and, if not, what measures are being taken or contemplated in order to give full effect to the provisions of *Article 5 of the Convention* in legislation as well as in practice. The Committee wishes to remind the Government once again that, in accordance with this Article, the provision of invalidity, old-age and survivors' benefits, death grants and employment injury pensions shall be guaranteed as of right, even in the absence of bilateral agreements, both to its own nationals and to the nationals of any other State which has accepted the obligations of the Convention for the corresponding branches, and to refugees and stateless persons, in the event of the residence of the beneficiary abroad irrespective of the country of residence.

[The Government is asked to report in detail in 1999.]

Central African Republic (ratification: 1964)

In response to the Committee's previous comments concerning *Article 4 (branch (g)) and Article 5 (branch (e)) of the Convention*, the Government again indicates that draft texts are being drawn up with a view to making the necessary amendments to bring the national legislation into line with the provisions of the Convention. Given that the Government has referred to the drafts in question since 1993, the Committee is once again obliged to urge the Government to adopt these amendments in the very near future with, if necessary, the technical assistance of the ILO, so as to give full effect to the Convention in relation to the following points.

Article 4 (branch (g)) (employment injury benefit). Section 27 of Act No. 65-66 of 24 June 1965 on industrial accident compensation should be supplemented by an express provision that in the case of a victim of an occupational injury who was a national of a State which has accepted the obligations of the Convention concerning employment injury, his dependants (survivors), even if they were resident abroad at the time of the victim's death and continue to reside abroad, shall receive survivors' benefits, if it is proved that they were actually dependent at the time of his death.

Article 5 (branch (e)) (old-age benefit). The national legislation should be amended to provide for payment of old-age benefit in case of residence abroad, both to nationals of the Central African Republic and to nationals of any other member State that has accepted the obligations of the Convention concerning branch (e).

[The Government is asked to report in detail in 1999.]

France (ratification: 1974)

The Committee notes with regret that the report of the Government does not contain any reply to its previous comments that it has been making for a number of years. It also notes that this case was discussed at the Conference Committee in June 1997 and that on that occasion the Government representative referred to numerous decisions, in particular of the "Cour de Cassation", and of the constitutional council which recognize the principle of the equality of treatment between nationals and foreigners in the area of social security, and determine the conditions of its realization, in particular through the agreements between Third World countries and the European Community. The Government representative referred also to new legislative provisions to be adopted by the Government which have been recently put in place. Together with the Conference Committee, the Committee must once again stress the importance it attaches to the principle of the equality of treatment in social security, which has to be applied, in accordance with *Articles 3 and 4 of the Convention*, without any condition as to residence, to the nationals of all States having accepted the obligations under the Convention, and not only to nationals of countries which are a party to a bilateral or multilateral agreement based on international reciprocity. The Committee therefore hopes that the Government will not fail to supply a detailed report for examination at its next session containing full information both on the situation in law and in practice and on the measures taken or contemplated to bring the national legislation and practice into full conformity with the Convention on the following points raised in its previous observation.

1. *Article 3, paragraph 1, of the Convention, branch (d) (Invalidity benefit).* (a) With regard to the supplementary allowance of the National Solidarity Fund (FNS) provided for in section L.815-2 of the Social Security Code, the Government had referred in its previous comments to ministerial consultations on the question of extending the provision of this allowance to all foreigners resident in France. The Committee once again expresses the hope that the Government will be able to indicate in its next report the measures taken to grant in law and practice the FNS supplemental benefit to nationals of all member States which have accepted the obligations of the Convention (and not only to nationals of a country which has signed an international reciprocity agreement, as provided in section L.815-2 of the Social Security Code).

Concerning the scope of the retaliation clause allowed by *Article 4, paragraph 1, of the Convention*, the Committee refers to its observation of 1993.

(b) With regard to the allowance for disabled adults, instituted by Act No. 75-534 of 30 June 1975, the Committee hopes that the Government's next report will contain detailed information on the measures taken to ensure the payment of this benefit to foreigners residing in France who are nationals of any State that has accepted the obligations of the Convention (subject to the Government's entitlement to avail itself of *Article 4, paragraph 2(b), of the Convention* under which it may make the grant of a benefit conditional upon a period of residence of up to five years).

2. *Article 4, paragraph 1 (branch (d)) (Invalidity benefit)* and *branch (f) (Survivors' benefit).* In its previous comments, the Committee had noted that the legislation imposed the condition of residence in France for the provision of social security benefits (in this case invalidity and survivors' benefits) to foreigners insured under the general scheme (section L.311-7 of the Social Security Code), the agricultural scheme (section 1027 of the Rural Code) and the mines scheme (section 184 of Decree No. 46-2769 of 27 November 1946). In its report for the period 1 July 1991 to 30 June 1992, the Government indicated that concerning invalidity pensions, and invalid widowers' or widows' pensions, the condition of residence shall be fulfilled at the time of making a claim in the case of nationals of a country with which France does not have an agreement. It added that, with regard to survivors' pensions, the benefit of a reversionary pension may, in the case where the deceased insured was not a national of a country with which France has entered into an agreement, be obtained in the following situations: the deceased insured person has already obtained validation of the right to an old-age pension; the insured person who had not exercised the right to the pension had resided in France at the moment of death. The Committee noted that a condition of residence always exists for non-national beneficiaries,

but only at the moment of exercising the right to benefit, that is to say, at the time when presenting the request to liquidate the invalidity or survivors' pension.

In these conditions, the Committee again hopes that, in all cases where the insured or the deceased was subject to the social security system in France at the moment of the contingency, the appropriate measures will be taken, concerning branches (d) and (f), to ensure the application of this provision of the Convention for payment of benefits, both in law and practice concerning equality of treatment, without condition of residence for nationals of all States bound by the Convention.

3. In its previous observation the Committee noted the observations of the French Democratic Labour Confederation (CFDT) on the modifications of the Social Security Code by Law No. 93-1027 of 24 August 1993 (concerning the supervision of immigration and the conditions for entry, reception of stay of foreigners in France) which introduced the requirement of regular residence to receive benefits and which has resulted in the denial of all right to social security benefit for persons in irregular situations. The CFDT added in a new observation that this legislation has created situations which are unacceptable. Foreigners having the right to stay for numerous years have paid contributions to the social security fund. The loss of this right, in case of non-renewal of a residency permit, for example, would result in the loss of all benefits from these contributions since the person would cease to be a member of the fund.

The Committee also has noted the Government's statement in its report for Convention No. 97 that the provisions of the above-mentioned law do not violate the principle of equality of treatment for foreigners in conditions of regular residence or stay in French territory.

The Committee recalls that the principle of equality of treatment provided in *Articles 3 and 4 of the Convention* is intended to eliminate discrimination based on a person's nationality. Consequently, a requirement of lawful residence in the country or of lawful authorization to be in employment does not appear to be contrary to this principle; where such conditions are imposed the difference in treatment does not appear to be motivated by the alien status of the persons concerned but rather by their legal position under the regulations governing entry into and residence in the country, or access to employment.

The Committee wishes to stress that the loss of right of residence should not affect rights in the course of acquisition which the insured can claim for the periods of contribution in which he was in a regular situation. In this case, the rights in course of acquisition of the insured shall be maintained under the agreements provided for in *Articles 7 and 8 of the Convention*. Furthermore, in the case where the loss of right to remain occurs after the liquidation of rights, the provision of long-term benefits shall be guaranteed even after the insured person has left the national territory, in accordance with *Article 5 of the Convention*.

The Committee asks the Government to indicate any new developments in this respect.

Iraq (ratification: 1978)

The Committee notes with regret that the Government's report simply reproduces the text of its previous reports supplied in 1993 and 1994 and does not contain a reply to the Committee's previous comments. In this situation the Committee cannot but repeat its previous observation which read as follows:

> *Article 5 of the Convention* (Provision of benefits abroad). Referring to its previous comments concerning the application of this provision of the Convention, the Committee notes

the information contained in the Government's report as well as the discussions which took place in the Conference Committee in 1994. The Committee recalls that for several years it has been asking the Government to indicate the measures taken or contemplated with a view to removing numerous restrictions concerning payment of benefits abroad for Iraqi nationals as well as foreign nationals, contained in section 38 of the Workers' Pension and Social Security Law No. 39 of 1971 and in Instruction No. 2 of 1978 regarding payment of social security pensions to insured persons leaving Iraq, which are contrary to this provision of the Convention. In this respect, the Committee notes from the Government's report, that the situation has remained unchanged. The Government's last report mainly reproduces the information contained in its previous report and in the statements made by the Government representative during the discussion of this case in the Conference Committee in 1993 and 1994, according to which, rules concerning the payment of benefits abroad are of a purely procedural nature and do not constitute restrictions on the payment of benefits conflicting with the Convention. The Committee refers in this respect to the request it is addressing directly to the Government in which it reviews in detail the effect on the application of the Convention of section 38 of the Workers' Pension and Social Security Law No. 39 of 1971 and Instruction No. 2 of 1978 respecting the payment of social security pensions to persons who leave Iraq.

The Committee nevertheless notes, from the information supplied in the report and in the Conference Committee in 1994 by the Government representative, that the Government confirms its intention to study the possibility of modifying the national legislation and to pay benefits due to foreign workers, including Egyptian workers, who left Iraq in 1990, once the economic embargo imposed on Iraq is lifted, and after the release of Iraq's frozen assets in foreign banks and the improvement of Iraq's economic situation. In view of the fact that no payment of benefits abroad has yet been made, the Committee cannot but once again urge the Government to adopt in the near future measures ensuring the provision of long-term benefits in the case of residence abroad for Iraqi nationals and for nationals of other countries which have accepted the obligations of the Convention in respect of the branch in question, as well as for refugees and stateless persons, and to remove the restrictions in this respect in the light of the more detailed comments contained in the Committee's direct request.

Italy (ratification: 1967)

Articles 3, 5 and 10, paragraph 1, of the Convention, branch (e) (old-age benefit). Further to its previous comments, the Committee notes from the Government's report that the social allowance ("assegno sociale") provided in section 3, paragraph 6, of the Law of 8 August 1995, which has replaced the social pension, is a means tested benefit paid only to Italian citizens over 65 years of age residing in Italy. Recalling the importance of the principle of equality of treatment as provided for in the aforementioned Articles of the Convention, the Committee hopes that the Government's next report will indicate what measures have been taken or are contemplated:

(a) to grant the right to this benefit, in accordance with *Articles 3 and 10, paragraph 1, of the Convention*, to the nationals of the other member States for which the Convention is in force in this respect of this branch and to refugees and stateless persons (without prejudice, as the case may be, to the Government's option to have recourse to *Article 4, paragraph 2(c), of the Convention*);

(b) to ensure the payment of "social allowance", in case of residence abroad, both to Italian nationals and to nationals of any other member State which has accepted the obligations of the Convention for branch (e) as well as to refugees and stateless persons (without prejudice to the Government's option to have recourse to *Article 5,* *paragraph 2*, so as to subject the payment of this benefit to participation of the Members concerned in schemes for the maintenance of rights, as provided for in *Article 7 of the Convention*).

[The Government is asked to report in detail in 1999.]

Suriname (ratification: 1976)

Article 5, branch (g) (employment injury benefit), of the Convention. In reply to the Committee's previous comments that it has been making for a number of years concerning the need to repeal section 6(8) of Decree No. 145 of 1947, as amended, the Government states that this section does not restrict payment of pensions abroad but gives the opportunity to the beneficiaries to convert the periodical payments into a lump sum if they can prove to the head of the Labour Inspection that in a certain time they will leave the country. The Committee recalls in this respect that the said section 6(8) provides not for the payment of the pension abroad, but only for the possibility for a beneficiary to request the conversion of his employment injury pension into a lump sum if he transfers his residence abroad before the expiry of the three-year period from the date of the accident, during which the degree of disability is still subject to review by the competent Suriname authority, and that there is no provision in the legislation whereby the payment of the pension abroad is guaranteed to the beneficiary or his dependants after the expiry of this period. In this situation and taking into account that, under *Article 5 of the Convention*, employment injury pensions must be paid without restrictions where the beneficiary, whether a national of Suriname or of any State that has accepted the obligations of the Convention in respect of this branch, transfers his residence outside the territory of Suriname, the Committee would once again urge the Government to take all necessary measures in the very near future to bring its national law and practice into full conformity with this important provision of the Convention.

[The Government is asked to report in detail in 1999.]

Syrian Arab Republic (ratification: 1963)

Article 5 of the Convention. With reference to its previous comments, the Committee notes, from the Government's report received in June 1997, that it has once again asked the Public Social Security Institution for information on the status of the draft decree to amend section 94 of the Social Insurance Code to provide that the beneficiary of a pension, his dependants or the dependants of the insured person, who leave the territory of the Syrian Arab Republic, may require that the pension to which they are entitled be transferred to the country in which they reside. The Government adds that it will not fail to inform the Committee of any development in this area. Taking into account the fact that the Government is referring to the draft decree mentioned above already since 1984, the Committee trusts that the Government will spare no efforts in order to bring about the adoption of this decree in the very near future, so as to give full effect to this important provision of the Convention, by ensuring the right for the beneficiaries to request the payment of their pensions abroad into their new country of residence.

Article 10. In reply to the Committee's previous comments, the Government indicates in its last report that it is consulting the Public Social Security Institution as to the method permitting to include into the new draft Social Insurance Code a provision expressly providing for its application to refugees and stateless persons, notwithstanding the fact that the draft Code, similarly to the Code currently in force, implicitly covers these persons as it is applicable to all workers because of the compulsory character of insurance. In this situation and in order to remove any ambiguity in the law, the

Committee would once again request the Government to explicitly include refugees and stateless persons in the scope of the new Social Insurance Code to be adopted, in line with the requirements of this provision of the Convention.

[The Government is asked to report in detail in 1999.]

Turkey (ratification: 1974)

Article 3, paragraph 1, of the Convention. (a) The Committee notes the information provided by the Government in its report, as well as in the report on Convention No. 102, in reply to the Committee's previous comments concerning section 3, subsection 2(a), of the Social Insurance Act No. 506 of 1964, which, in contrast to the compulsory insurance of national workers, subordinates participation of the foreign workers in invalidity, old-age and survivors' insurance to a written request on their part — a requirement which might confer on this participation a voluntary character. In its report on Convention No. 102, the Government states that the written request is aimed at preventing duplicate insurance of foreign workers and payment by them of double contributions, and is considered not as an obligation, but as an awarded right subjected to the person's own choice. In the report on Convention No. 118, the Government further states that, under section 90 of the Constitution of Turkey which gives the force of internal law to duly ratified international treaties, the self-executing provisions of Convention No. 118 pre-empt contrary provisions in the prior laws or in the general laws on social security; thus, provisions of bilateral and multilateral social security Conventions ratified by Turkey, which ensure equality of treatment for foreigners, are implemented in Turkey.

The Committee recalls in this respect that already in its reports of 1985 and 1986 the Government has indicated that the practice of making the affiliation of foreigners dependent upon their application has been abolished and that studies to introduce corresponding amendments to section 3, subsection 2(a), of Act No. 506 were initiated. The Government's last report, however, does not refer any more to such amendments and its report on Convention No. 102 suggests, moreover, that the practice of written requests has been re-established. In this connection, the Committee further notes that, according to the Government's report, the Confederation of Turkish Trade Unions maintains its previous view, expressed in the communication dated 4 July 1994, that the above-mentioned section of Act No. 506 violates provisions on equal treatment of Convention No. 118. The Committee is fully conscious that, in accordance with the national Constitution, *Article 3, paragraph 1, of the Convention* should, in principle, override any contradicting provision in the national social security legislation. The Committee considers, however, that, in order to dissipate any ambiguity in law, it is important that the national legislation be brought into conformity with the said Article of the Convention, so as to provide for the compulsory affiliation of foreigners who are nationals of any State for which the Convention is in force, to the social insurance scheme envisaged by Act No. 506 under the same conditions as for Turkish nationals. It therefore once again hopes that the Government would be able to indicate in its next report the progress made in this respect.

(b) Further to its previous comments, the Committee notes that the Government's report does not contain any information on the question of amending Act No. 1479 of 2 September 1971 (in particular Part II, section 1 (General Provisions), II(b)), which excludes foreign nationals from the scope of the self-employed persons' insurance scheme. The Committee trusts that the Government will not fail to indicate in its next report the progress made on this point as well.

Article 10. The Committee observes that the Government's report does not reply to its previous comments concerning the application of this Article of the Convention. It would therefore once again ask the Government to indicate the measures taken or contemplated to adopt an express provision to include refugees and stateless persons in the scope of Act No. 506 of 1964 and Act No. 1479 of 1971.

[The Government is asked to report in detail in 1999.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Bolivia, Brazil, Central African Republic, Democratic Republic of the Congo, Iraq, Italy, Tunisia.*

Information supplied by *Germany* in answer to a direct request has been noted by the Committee.

Convention No. 119: Guarding of Machinery, 1963

Central African Republic (ratification: 1964)

Further to the comments which it has made for many years on the application of *Article 2, paragraphs 3 and 4, of the Convention*, the Committee notes that the implementing regulations provided for in section 37(3) of General Order No. 3758 of 25 November 1954 with a view to designating machinery or dangerous parts thereof have still not been adopted. The Committee again notes the Government's statement that the Bill is being prepared by the competent authorities.

The Committee hopes that the future implementing regulations will also give effect to *Article 10, paragraph 1*, of the Convention establishing the obligation of an employer to take steps to bring national laws or regulations relating to the guarding of machinery and to the dangers arising and the precautions to be observed in the use of the machinery to the notice of workers, as well as to its *Article 11* which provides that workers shall not use machinery without the guards provided being in position, nor make such guards inoperative, while guaranteeing that, irrespective of the circumstances, workers shall not be required to use machinery when the guards provided are not in position or when they are inoperative.

The Committee recalls that, should it consider it to be appropriate, the Government may seek the assistance of the International Labour Office in the preparation of this text.

Democratic Republic of the Congo (ratification: 1967)

Articles 2 to 4 of the Convention. For several decades the Committee has drawn the Government's attention to the absence of measures giving effect to the above-mentioned Articles and to the need to make provision in the national legislation for, or to establish by other equally effective measures, the prohibition of the sale, hire, transfer in any other manner and exhibition of machinery of which the dangerous parts are without appropriate guards, with the obligation to respect this prohibition being placed on the person selling, hiring, exhibiting or transferring the machinery in any other manner, or on their representatives.

In its reports, the Government referred on several occasions to a draft Order relating to the guarding of machinery and to the review of the Labour Code as part of which provisions designed to give effect to the Articles of the Convention in question would be adopted. The Committee notes that this position was confirmed by government representatives during the technical advisory mission conducted by the ILO in 1997.

The Committee once again express the hope that in the very near future the Government will take all the necessary measures to ensure finally that the provisions of *Articles 2 to 4 of the Convention* are applied.

Ghana (ratification: 1963)

Articles 1 and 17 of the Convention. In comments made for a number of years, the Committee has drawn the Government's attention to the fact that the Convention is applied only to limited sectors of economic activity through the Factories, Offices and Shops Act, 1970, and the Mining Regulations, 1970, as amended. Some branches of activity — agriculture, forestry, road and rail transport and shipping — are not covered by it. In its report for the period ending 30 June 1993, the Government stated that the issue had been placed before the tripartite National Advisory Committee on Labour which should make recommendations for the adoption of appropriate measures that give effect to the Convention in the branches mentioned.

The Committee notes that no new information has been provided by the Government. It requests the Government, once again, to supply detailed information on measures taken to ensure the guarding of machinery in all sectors of economic activity and notably in agriculture, forestry, road and rail transport and shipping.

Guatemala (ratification: 1964)

In its 1995 observation, the Committee noted the comments made by the Latin American Central of Workers (CLAT) alleging violations of the Convention in a given enterprise where machinery was being used which was dangerous for the life and health of the workers. The Committee noted that, according to the information supplied by the Government, the renewal of the dangerous installations and equipment had been ordered and was to be completed in 1995, and asked the Government to continue to provide information on the application of the Convention, based on extracts of inspection reports, the number and nature of the infringements recorded, the number, nature and causes of the accidents, etc., in practice.

In its last report, the Government refers to Article 111 of the General Regulations on Occupational Safety and Health, under which the Ministry of Labour is empowered to close temporarily all or some of the sites of a given workplace or to prohibit the use of machinery where a danger to the life, health or physical integrity of workers may arise, until the necessary safety measures have been taken to avert the danger.

The Committee observes that the Government has supplied no information on the practical application of the Convention. It therefore again asks the Government to provide extracts of inspection reports, and information on the number of workers covered by the relevant legislation, the number and nature of the infringements recorded and the number, nature and causes of the accidents that have occurred *(point V of the report form).*

Jordan (ratification: 1964)

The Committee notes with interest the adoption of the new Labour Code, Act No. 8 of 1996, Chapter IX, which contains provisions of a general nature aimed at protecting workers against hazards and diseases that may result from work or machines. The Committee notes that section 85(c) of the Code provides for a regulation which should envisage prevention and safety measures in the operation of industrial machinery and at the workplace. The Committee hopes that the mentioned regulation will give full effect to the Convention and requests the Government to communicate a copy of the text once it has been adopted.

Article 2 of the Convention. Referring to its previous comments, the Committee notes that the Government refers to Regulation No. 57 of 1963 which contains provisions obliging the employer or the director responsible for the undertaking to build protection fences around certain gears, moving parts, drive belts and any other parts of machinery which may be dangerous. The Committee recalls that this provision of the Convention expressly prohibits the sale, hire, transfer in any other manner and exhibition of machinery of which the dangerous parts are without appropriate guards. The Committee hopes that the regulation to be adopted under section 85(c) of the new Labour Code will deal with the above-mentioned requirements of the Convention.

Article 4. With reference to its previous comments, the Committee notes that the Government's latest report contains no specific information concerning measures giving effect to this Article and that no relevant provision had been laid down in the new Labour Code to this effect. The Government is therefore requested to indicate the provision stipulating the obligation to ensure compliance with *Article 2* of the Convention upon the vendor, the person letting out on hire or transferring the machinery in any other manner, the exhibitor, or their respective agents, where appropriate, upon the manufacturer when he sells machinery, lets it out on hire, transfers it in any other manner or exhibits it.

Latvia (ratification: 1993)

The Committee notes that the Government's report has not been received. Referring to its previous comments, the Committee recalls the observation made by the Free Trade Union Federation of Latvia (LBAS) alleging that the Convention was only partly applied because of the use of obsolete machines, and pointing out the high risk of accident to which employees are exposed using such machines.

The Committee recalls that under *Article 1 of the Convention*, the Convention applies to all power-driven machinery, new or second-hand. With respect to all such machinery, *Articles 2 and 6* prohibit the sale, hire, exhibition and transfer in any other manner, as well as the use of machinery if their dangerous parts specified in *paragraphs 3 and 4 of Article 2* are without appropriate guards or are not protected by other equally effective measures. The obligation to ensure compliance with the above-mentioned provisions rests, in accordance with *Articles 4 and 7*, on the vendor, the exhibitor, the person letting out on hire or transferring the machinery in any other manner, the manufacturer when he sells machinery, lets it out on hire, transfers it in any other manner or exhibits it, on their respective agents, when appropriate under national laws or regulations, and on the employer.

The Committee requests the Government to indicate the measures taken to apply the above-mentioned provisions of the Convention to all categories of power-driven machinery, including those which are obsolete but still used. Please supply the English translation (if available) of the national legislation referred to in the Government's first report giving effect to the Convention with respect to all categories of machinery.

Madagascar (ratification: 1964)

In its previous comments, the Committee expressed the hope that the implementing texts of the Occupational Safety and Health Code which, according to the Government, were being drafted would give effect to the provisions of the Convention, particularly

Articles 2 and 4 which provide that the sale, hire, transfer in any other manner and exhibiting of machinery of which the dangerous parts specified in *paragraphs 2 and 3 of Article 2* are without appropriate guards must be prohibited, and that the obligation to ensure compliance with these provisions must rest on the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor, as well as on the manufacturer when he sells machinery, lets it out on hire, transfers it in any other manner or exhibits it.

In the absence of any information from the Government, the Committee once again requests information on any progress made in this respect including a copy of the implementing texts, as soon as they have been adopted.

Morocco (ratification: 1974)

Article 11 of the Convention. The Committee refers to its previous comments in which it drew the Government's attention to the need to take measures to ensure that no worker may use or be required to use machinery without the guards provided being in position, and that no worker may make such guards inoperative. The Committee refers to the Government's statement in its report on the application of the Convention for the period ending 30 June 1992, that the regulatory part of the draft Labour Code will provide expressly that no worker may use machinery of which the guards are inoperative. In view of the absence of any new information on the matter, the Committee again expresses the hope that relevant provisions will be adopted in the near future and asks the Government to provide a copy of them as soon as they have been adopted.

Article 17. For more than 20 years the Committee has been drawing the Government's attention to the lack of any measures to ensure the application of the provisions of the Convention to machinery used in agriculture. The Committee refers to its previous observation and urges the Government to consider the possibility of introducing provisions giving effect to the Convention in the agricultural sector in the regulatory part of the draft Labour Code currently being prepared or in some other law or regulation.

Nicaragua (ratification: 1981)

The Committee notes that, 15 years after ratification, national legislation contains no provisions giving effect to most of the provisions of the Convention and that the Government continues to refer, in a general manner, to some preliminary draft texts which take into account the Committee's observations.

The Committee notes that in its report for the period ending 30 June 1992, the Government referred to a number of activities carried out by the General Directorate of Occupational Health and Safety for the purpose of identifying hazardous situations and promulgating control measures. The Committee trusts that in the framework of these activities the body in question will be able to take specific measures to formulate provisions which give effect to the Convention.

The Committee hopes that the Government will do everything possible not to postpone the adoption of the measures needed to guarantee application of the Convention. The Committee requests the Government to keep it informed of progress towards this target.

Sierra Leone (ratification: 1964)

For a number of years, the Committee has drawn the attention to the fact that national legislation does not contain provisions to give effect to *Part II of the Convention* (prohibition of the sale, hire, transfer in any other manner and exhibition of unguarded machinery) and that it does not provide for the full application of *Article 17 of the Convention* (which applies to all sectors of economic activity), as it is not applicable to certain branches of activity, inter alia, sea, air or land transport and mining.

Since 1979, in reply to the Committee's comments, the Government has indicated in its reports that a Bill to revise the 1974 Factories Act was being drafted and would contain provisions consistent with those of the Convention, and would apply to all the branches of economic activity. In its latest report (received in 1986), the Government indicates that the draft Factories Bill, 1985, has been examined by the competent parliamentary committee and is to be submitted to Parliament for adoption.

With its report for the period ending 30 June 1991, the Government supplied a copy of extracts of the Factories Bill containing provisions which should give effect to Part II of the Convention. In this connection, the Government was requested to indicate the stage of the legislative procedure reached by the Bill and the body which was in the process of examination of the Bill. Since no information has been provided by the Government in this respect, the Committee once again expresses the hope that the above-mentioned Bill will be adopted in the near future and requests the Government to provide a copy of this text, once it has been adopted.

Turkey (ratification: 1967)

The Committee notes the observations made by the Turkish Confederation of Employer Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-IŞ), which are supplied with the Government's report.

1. *Article 17 of the Convention.* In its previous comments, the Committee requested the Government to take the necessary measures to extend the scope of the 1983 Regulations on the Guarding of Machinery, which were applicable only to the commercial and industrial sectors, to all sectors of the economy including agriculture, air and sea transport.

The Committee notes from the Government's latest report that the voluntary application of safety standards for machinery, adopted by the Turkish Standards Institution, now constitutes an obstacle to their total application in all sectors of economic activity. In this respect, consultations have recently started between the competent administrative bodies and the Turkish Standards Institution with a view to make compulsory the above-mentioned safety standards for machinery.

The Committee recalls that in conformity with this provision of the Convention this instrument applies to all branches of economic activity unless the Member ratifying the Convention specifies a more limited scope of application by a declaration appended to its ratification. Since the Government did not make such a declaration, the provisions of the Convention apply to all sectors including agricultural, air and sea transport sectors. Therefore, the Committee asks the Government to indicate the measures taken in order to give full effect to the Convention in all branches of economic activity.

2. *Article 15.* With reference to the Committee's previous comments in which the Government had been requested to supply information on the measures taken or contemplated to ensure adequate inspection with regard to the application of the 1983

Regulations on the Guarding of Machinery, the Committee notes that no specific information has been provided in this respect in the Government's latest report.

The Committee notes the observations of the Confederation of Turkish Trade Unions concerning the absence of serious measures taken to ensure the effective application of the 1983 Regulations on the Guarding of Machinery and that the requirement of *paragraph 1* of this Article has been ignored. Since the Government's report contains no comments with respect to this observation, the Government is requested to indicate the measures taken in conformity with this provision of the Convention. The Committee requests the Government to give details of the steps taken to ensure that appropriate inspection is carried out in all sectors of economic activity including the unregistered or informal sector which, according to TÜRK-IŞ, is not covered by the Convention.

3. The Committee notes from the observation made by the TISK that the number of fatal accidents, as well as all kinds of work accidents, and occupational diseases tended to decrease in the 1990s. The Committee also notes from the statistical data provided with the Government's last report relating to the occupational accidents, that accidents connected with the machinery and hand tools constitute a considerable part among all the accidents and injuries. The Government is requested to supply, with its next report, extracts from official reports concerning occupational accidents and information on any practical difficulties in the application of the Convention *(point V of the report form)*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Denmark, Italy, Kuwait, Malaysia, Malta, Niger, Norway, Paraguay, Russian Federation, Switzerland, Ukraine*.

Convention No. 120: Hygiene (Commerce and Offices), 1964

Madagascar (ratification: 1964)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> For many years, the Committee has been drawing the Government's attention to the fact that there are no specific laws or regulations to give full effect to *Articles 14 and 18 of the Convention*, which provide that seats shall be supplied to all workers without distinction on grounds of sex, and that noise and vibrations likely to have harmful effects on workers shall be reduced as far as possible. Since 1975, the Government has stated in its reports that the Order envisaged by the Labour Code of 1975 would give full effect to the above provisions of the Convention. The Committee notes the adoption on 25 August 1995 of a new Labour Code (Act No. 94-029), under section 208 of which the provisions respecting occupational health and safety of the 1975 Labour Code remain in force. The Committee also notes the information provided by the Government in its report to the effect that the National Assembly has adopted a Code respecting health, safety and the working environment and that the texts issued under the Code, which are currently being prepared, will take the provisions of the Convention into consideration. The Committee trusts that the Government will report the measures adopted in this respect in the near future and that it will provide copies of the provisions as adopted, including the text of the above Code when it has been enacted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Paraguay (ratification: 1967)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In comments it has been making since 1973, the Committee has requested the Government to take the necessary measures to give effect to the following Articles of the Convention: *Article 10* (maintenance of a comfortable and steady temperature); *Article 18* (reduction of noise and vibrations); and *Article 4(b) of the Convention* (to give such effect as may be possible and desirable under national conditions to the Hygiene (Commerce and Offices) Recommendation, 1964 (No. 120)). In its report for the year 1992, the Government indicated that Regulations concerning safety and health and occupational medicine had been adopted and would be sent to the Office as soon as they were printed. The Government's latest report refers to Decree No. 14390 which approves the Regulations concerning safety and health and occupational medicine and Decree No. 14204 which establishes the regulations concerning the National Occupational Safety and Health Council and indicates that the draft national safety and health and occupational medicine Act is being reviewed by the National Congress and will be sent to the Office as soon as it is adopted. The Committee trusts that the new legislation will ensure the full application of the Convention and requests the Government to send copies of Decrees Nos. 14390 and 14204, as well as any other relevant legislation adopted, with its next report.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

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In addition, requests regarding certain points are being addressed directly to the following States: *Bolivia, Costa Rica, Djibouti, Ghana, Iraq, Viet Nam.*

Convention No. 121: Employment Injury Benefits, 1964 [Schedule I amended in 1980]

Bolivia (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. *Article 5 of the Convention.* In its previous comments the Committee noted that, according to the statistics provided by the Government and to the ILO Year Book of Labour Statistics, 1991, the proportion of protected employees working in Bolivian industrial undertakings was lower than the proportion prescribed by the Convention ("*75 per cent* of all employees in industrial undertakings ..."). In these circumstances the Committee asked the Government to indicate the measures taken or contemplated gradually to extend the employment injury branch of the social security scheme to new categories of workers or employees in industrial undertakings. Since the Government's report contains no reply on this matter, the Committee is bound to express, once again, the hope that the Government will adopt the necessary measures for this purpose. It also asks the Government to provide updated statistical data of the total number of active insured persons employed in industrial undertakings as defined in *Article 1(c) of the Convention*, and the total number of employees in those undertakings.
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> 2. *Article 7.* The Government states in its report that it has noted the Committee's recommendation concerning commuting accident coverage. The Committee asks the Government to indicate in its next report the progress made in this respect.
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> 3. *Article 8.* In its answer to the Committee's previous comments, the Government states that it has noted the recommendation that, in a future edition or revision of the Social Security Code, an updated list of occupational diseases should be published, along with the

> activities likely to cause them, in conformity with schedule I annexed to the Convention. The Committee asks the Government to indicate any progress made in this area in its future reports.
>
> 4. *Article 9, paragraph 3.* With regard to the previous comments, the Government indicates in particular that insured persons and beneficiaries suffering from chronic diseases who no longer qualify for medical care provided through social security are entitled, unconditionally, to benefits in kind in hospitals of the Ministry of Public Health. The Committee notes this statement. It points out, however, that the Government has not provided the legislative, regulatory or other texts stipulating the type of medical care provided, in accordance with section 113 of Decree No. 14643 of 1977, in the specialized centres of the Ministry of Social Security and Public Health. It therefore asks the Government once again to provide these texts.
>
> 5. The Committee notes with interest that the Government considers that assistance from the ILO Regional Adviser for Latin America would be most useful in drafting the report in the manner established in the report form adopted by the Governing Body with regard to *Articles 13, 14 and 18 (in relation to Articles 19 and 20), and 21 (in relation to Articles 14 and 18) of the Convention.* The Committee notes this statement with interest. It expresses the hope that the Government will be able, possibly with the assistance of the Regional Adviser, to provide the above-mentioned information.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Libyan Arab Jamahiriya (ratification: 1975)

The Committee notes with regret that the Government's report has not been received for the fourth consecutive time. It must therefore repeat its previous observation which read as follows:

> *Article 21 of the Convention.* With reference to its previous comments, the Committee notes the Government's statement that, in accordance with sections 28 and 34 of the Social Security Act, No. 13 of 1980, the level of cash benefits currently payable for long-term benefits is reviewed following substantial changes in the cost of living or wage levels. It notes, however, that the Government's report does not contain the statistics requested in order to assess the manner in which this Article of the Convention is applied in practice. It therefore once again requests the Government to supply the statistics called for in the report form under this Article of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sweden (ratification: 1969)

With reference to its previous observation, the Committee notes the detailed report of the Government, requested as a follow-up of the recommendations made by the committee set up to examine the representation made under article 24 of the ILO Constitution by the Swedish Trade Union Confederation (LO), the Swedish Confederation of Professional Employees (TCO) and the International Confederation of Free Trade Unions (ICFTU), approved by the Governing Body at its 258th Session (November 1993).

Article 8 of the Convention. In reply to the questions raised in paragraph 47(b) of the report of the above-mentioned committee concerning changes in the definition of employment injury and in the burden of proof in such cases, the Government states in its report that no test cases have been decided and no evaluation has yet been made of the effects of the changes in the work injury concept and the burden of proof in work injury cases. However, in its report on Convention No. 102, the Government adds that "it can be assumed that in a considerably greater number of cases compensation will be denied in the future that has been the case to date". In this situation, the Committee trusts that the Government would not fail to supply in its next report full information on all the points mentioned in the said paragraph 47(b), including judicial decisions and statistics on the number of cases in which compensation has been denied according to the new rules, as soon as this information is available.

Article 9, paragraph 3. As regards the abolition of a one-day waiting period for payment of employment injury cash benefit, the Government indicates that such a measure would entail a far-reaching and administratively burdensome change of system. The resulting obligation for the social insurance service to assess all work injuries reported, and not only those entailing a permanent reduction of working capacity and an entitlement to an annuity, as it is done now, would limit the benefits resulting from the coordination with health insurance, increase the cost and the administrative overheads of work injury insurance. Due to the present state of government finances, the Government has not found it possible to introduce such special arrangements for short and medium-length illnesses resulting from work injuries and, hence, to abolish the waiting day. On the other hand, the Government indicates that in its Spring Economic Policy Bill (Prop. 1995/96:150), it announced an increase in benefit level, as from 1998, to 80 per cent of qualifying income. Moreover, in the final report of the committee for a new structure for sickness and occupational injury insurance (SAK) it is recommended that, while there should be a 90-day period of coordination with health insurance, in the event of accidental injury, a work injury sickness benefit should be introduced which, together with regular sickness allowance, will equal 98 per cent of the qualifying income. The comments on this report are currently being processed by the Government which will be taking a policy decision on the future structure of work injury insurance. The Committee notes this information. It also notes that, in its comments on the Government's report, dated 9 April 1997, the Swedish Trade Union Confederation finds the maintenance of a one-day waiting period with respect to employment injury benefit unacceptable and in violation with the Convention and states that the Government still has no plans to give compensation from the first day.

The Committee is fully aware of the financial and administrative costs involved in suppressing a one-day waiting period, as well as of the efforts taken by the Government to restore the level of benefits which was previously reduced due to the state of government finances. In this respect it notes, in particular, the above-mentioned proposal of SAK to introduce, in addition to the regular sickness allowance, a special work injury sickness benefit for those suffering employment injuries. The Committee hopes that, in considering this proposal in the overall new structure of sickness and occupational injury insurance, it will be possible for the Government to implement it in such a manner as to ensure that the cash benefits for incapacity for work due to a victim of an employment injury are paid from the first day of incapacity, in accordance with *Article 9, paragraph 3, of the Convention*. The Government is asked to indicate the progress made in its next report.

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In addition, requests regarding certain points are being addressed directly to the following States: *Finland, Libyan Arab Jamahiriya*.

Convention No. 122: Employment Policy, 1964

Algeria (ratification: 1969)

1. The Committee took note of the Government's report for the period ending June 1996. It regrets that it replies only partly to the points raised in its previous observation. The Committee notes that the global statistical data supplied on the active population, employment and unemployment relate to 1993 and 1994 but not to the period covered by the report. It hopes that the Government will supply in its next report statistical data as detailed and up to date as possible on the level and trends, during the period in question, of employment, underemployment and unemployment, at national level and in the various regions, by sector of activity, sex, age and level of qualifications. The Committee recalls in this respect that it is essential for employment policy decisions to be made on the basis of precise knowledge of the situation and trends in activity and employment. It requests the Government to describe the measures taken or under consideration to improve collection and analysis of the relevant statistical data.

2. Basing itself on information and analyses made available by the competent services in the ILO, the Committee believes it can summarize the evolution of employment and unemployment since 1994 in the following manner. The hydrocarbons sector, as well as agriculture which has profited from favourable climatic conditions, are mainly responsible for the increased production of 3.9 per cent in 1995 and 3.4 per cent in 1996, while industrial production has contracted sharply. In this context, the employment increase both in the modern sector and the informal sector has proved to be insufficient to absorb the growth in the active population, and the unemployment rate which was already 26.5 per cent in 1994, has reached the unprecedented rate of 28.3 per cent in 1996. The Committee is bound to note the contrast between the progress made within the framework of the structural adjustment programme agreed with the International Monetary Fund, in terms particularly of budgetary balance, a noteworthy reduction in the inflation rate and the stabilization of external accounts, and the continuing deterioration in the employment situation, where young people looking for their first jobs are the main victims. Since the Government has not supplied the information required on this matter, the Committee is bound to express its concern in regard to the effective pursuit "as a major goal" and "within the framework of a coordinated economic and social policy" of "an active policy designed to promote full, productive and freely chosen employment". It trusts that the Government will supply in its next report information demonstrating that the measures taken or contemplated in regard to investment policy, monetary and budgetary policies, industrial and regional development policies and prices, incomes and wages policies are contributing to pursuing the objectives of the Convention. The Committee also requests the Government to specify how it envisages the impact on employment of implementing its privatization programme.

3. The Committee notes the general indications relating to the new arrangements for youth integration into employment. It notes that the Government confirms the reorientation of labour market policy measures in favour of the establishment of micro-enterprises and refers to the launching of pre-recruitment contracts. The Committee would be grateful if the Government would supply any available assessment of the contribution of these arrangements to the lasting integration in productive employment of those concerned. Furthermore, it requests it to supply in its next report on the application of Convention No. 88 full information on the renovation of the public employment service which it mentions.

4. The Committee particularly regrets that the Government has not supplied the information requested showing how consultation with all the persons affected on employment policies is assured in practice, as required by *Article 3 of the Convention*. It is bound to stress once again the importance it attaches to the full application of this essential provision of the Convention, particularly in a context of high unemployment and wide-ranging structural reforms. The Committee recalls that it requested the Government to describe the consultations held within the framework of the Economic and Social Council, providing all relevant examples of recommendations, opinions, reports or studies. It hopes to find full information on this matter in the Government's next report.

Australia (ratification: 1969)

1. The Committee took note with interest of the Government's report for the period ending June 1996, which contains extensive and detailed information together with a series of relevant documents. It notes that the upturn in employment growth, which was already perceptible at the end of the previous period, has been confirmed with an average annual rate of 4 per cent in 1994-95 and 2.6 per cent in 1995-96; despite the increase in activity rates, particularly for women, this enabled the unemployment rate to be reduced to 8.5 per cent in 1996 from 9.7 per cent in 1994. The share of long-term unemployment, which stood at 36 per cent in 1994, was reduced to under 30 per cent of total unemployment in 1996.

2. The Government which took office in March 1996 states that it has undertaken to implement a National Job Creation Strategy which is designed to increase the employment growth rate for all Australians, in particular young people, by creating a climate favourable to economic growth. The medium-term budget policy aims to reduce the public deficit so as to increase the national savings available for the financing of private activity. Industrial and commercial policy is designed to accelerate the internationalization of the economy, while minimizing the cost of structural adjustment by means of regional or sectoral measures. In addition, wage policy emphasizes decentralized negotiation at enterprise level so as to guarantee the labour market flexibility necessary to create jobs. Noting that the aim which the previous Government had set itself of achieving an unemployment rate of around 5 per cent by the end of the decade, has not been retained, the Committee hopes that the next report will contain an interim assessment of the way in which the new economic policies are helping to further the employment goals of the Convention and in particular on any impact on general wage levels.

3. The Committee also notes the detailed information provided on active labour market policy measures and the assessment of their effectiveness. In particular, it notes that special efforts continue to be devoted to reintegrating the long-term unemployed. The Committee requests the Government to continue to provide such information and to describe the reforms undertaken to improve the results obtained by these measures. It also notes the provisions creating closer links between the payment of benefits and the active search for employment, and requests the Government to continue to provide information on any new measures taken with a view to achieving better coordination between the mechanisms supporting the income of unemployed people and employment promotion. Finally, the Committee notes that, following the repeal of the Training Guarantee Act, reforms have been undertaken to better adapt training to the needs of employers and employees. The Committee invites the Government to describe any new measures for the coordination of education and training policies with employment prospects, taking also into account the provisions of the Human Resources Development Convention, 1975 (No. 142).

Belgium (ratification: 1969)

1. The Committee took note of the Government's report for the period ending June 1996. The data provided by the Government, which confirm those published by the OECD, demonstrate the persistent nature of a worrying employment situation owing to the continuing high level of unemployment and the characteristics of its distribution. The modest increase in employment growth in 1995 and 1996 was not sufficient to compensate for the previous reduction and, despite the slight improvement in the situation of the active population, the unemployment rate was still 12.4 per cent in 1996. Regional disparities were maintained with the unemployment rate remaining stable in Wallonia, while in Flanders, where the situation was already more favourable, it decreased. Although they continue to occupy an ever-decreasing share of the active population, young people under the age of 25 continue to be subject to an unemployment rate of over 20 per cent. Long-term unemployment represents more than 60 per cent of all unemployment, and this proportion is among the highest in western Europe.

2. In its report, the Government explains the main policies incorporated in the multi-year employment plan adopted in October 1995, which relate to the reduction in labour costs in order to promote the employment of least skilled workers, the incentive to distribute the jobs available by extending entitlement to a career break and the encouragement of part-time work, a new mechanism for the labour market integration of young people and the search for new sources of employment in the non-commercial services sector. The Committee also notes the provisions of the Inter-Professional Agreement relating to the promotion of the recruitment of young people or the long-term unemployed and to pre-retirement schemes. With reference to its previous observation, the Committee hopes that the Government's next report will contain an initial assessment allowing the effectiveness of the different programmes implemented to be evaluated. In addition, the Committee notes the importance assumed by measures designed to redistribute existing employment or to encourage early retirement from the labour market, in a context where activity rates are already relatively low. The Committee invites the Government to specify the manner in which it envisages the development of such measures in relation to the fundamental aims of the Convention. Finally, the Committee would be grateful if the Government would provide more detailed information on its education and training policy with a view to making workers more employable.

3. The Committee notes that the Government refers, without providing any details, to other aspects of the economic and social policies affecting employment policy, such as the review of the Act relating to competitiveness, entry into European monetary union or the financing of social security. With reference to the requests which it has made in each of its observations over many years, the Committee trusts that in its next report the Government will provide the information required in the report form on the manner in which the main policies are pursued, and in particular monetary and budgetary policies, contribute, "within the framework of a coordinated economic and social policy", to the promotion of full, productive and freely chosen employment, in accordance with *Articles 1 and 2 of the Convention*. Explanations by the Government of the different aspects of employment policy, as it is defined in the Convention, would be all the more useful since the labour market policy measures which it describes do not in themselves appear to have enabled it to make significant progress in the fight against unemployment.

Bolivia (ratification: 1977)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the Government's report for the period ending June 1994. In its previous comments, the Committee included a request for information on the situation, level and trends in employment, unemployment and underemployment, particularly with regard to the most vulnerable categories of the population such as women, young people seeking their first job, workers who have lost their jobs as a result of economic adjustment, indigenous peoples, etc. The Government states that it is not possible to satisfy such a request for the moment. Budgetary restrictions prevent the carrying out of regular censuses and/or surveys which would help to provide an overview of the labour market periodically and clearly. The Government states that it is the National Statistics Institute which prepares an annual integrated survey of households. In these circumstances, the Committee refers to the analysis and the statistical information transmitted by the ILO multidisciplinary technical team (MDT) in Lima. According to the data provided by the MDT, non-agricultural employment has increased rapidly during 1990-93, faster than demand, which resulted in the reduction of open urban unemployment (which fell by 7.3 per cent in 1990-91 to 5.8 per cent and 5.4 per cent in 1992 and 1993 respectively). Nevertheless, between 1990 and 1993, informal urban employment still continued to rise. Over 60 per cent of the urban economically active population is working in low productivity jobs or is unemployed. The Committee recalls that many aspects of an active employment policy lie beyond the competence of the minister responsible for labour so that preparation of a full report on this Convention requires consultations with other ministries or government agencies concerned such as those responsible for planning, the economy and statistics. In this respect, it would be appreciated if the Government's report could contain indications on the procedures adopted in order to take into account the objectives of an active employment policy in the light of the other economic and social objectives. The Committee trusts that the Government will do its utmost to ensure that, in its next report on the application of the Convention, statistical information can be supplied on the size and distribution of the labour force and the nature and extension of unemployment as an essential stage for the formulation and execution of an active employment policy, in the meaning of *Articles 1 and 2 of the Convention*.
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> 2. The Government's report includes some indications on assistance given to persons affected by administrative restructuring who can receive allowances and grants from the Social Relief Fund. The Committee hopes that in its next report the Government will be able to supply detailed indications on the results achieved by the measures designed to satisfy the needs of the least privileged categories of persons who have difficulty in retaining their employment or in obtaining lasting employment such as workers affected by administrative restructuring or industrial rationalization, women, young people, the disabled, or the long-term unemployed. Please indicate the results obtained by the measures envisaged in the context of decentralization and popular participation for the execution of regional and local programmes for strengthening small business and other employment programmes.
>
> 3. The Committee recalls that in its previous comments it was able to welcome the information supplied by the Government on the activities of the National Institute of Vocational Education and Training (INFOCAL). It requests the Government to refer again in its next report to matters pertaining to the coordination of education and vocational training policies with employment policy which is essential so that all workers have the fullest possible opportunity to qualify for a job for which they are well suited and to use in this job their skills and endowments.
>
> 4. Finally, the Committee notes that the Government's report does not contain the information requested on several occasions, by the Conference Committee on the Application of Standards among others, on the consultations which should be held on employment policy. These consultations should discuss the measures which have to be adopted in relation to employment policy with the aim of taking fully into account the experience and views of the persons affected and, furthermore, obtaining their full cooperation in the task of formulating

the policy concerned and enlisting the necessary support for its execution. The consultations with representatives of the persons affected might include representatives of employers and workers and also representatives of other sectors of the population such as those working in the rural sector and the informal sector. The Committee trusts that, bearing in mind the vital importance which it attributed in previous reports to agreement between the main social and economic agents, the Government will not fail to provide in its next report the details required by the report form under *Article 3 of the Convention*.

Brazil (ratification: 1969)

1. The Committee took note of the Government's report for the period ending June 1996. The Government refers to the loss of more than 400,000 jobs in 1995 in all the formal activity sectors. It emphasizes that, although the reduction in employment is lower than that registered at the beginning of the decade, it seems to show that economic growth is not translated into the creation of jobs on the formal labour market. With reference to its previous observations, the Committee hopes that the Government will soon be able to provide more detailed information on the changes in the labour force, employment and unemployment, not only in the main metropolitan areas but also throughout the country.

2. The Government indicates that its economic policy is designed to ensure price stability which benefits the most disadvantaged categories of the population, and to promote the integration of the economy into world markets. In this respect, the Committee notes that the progress made in controlling inflation has been accompanied by lower growth and overvaluation of the national currency. In addition, it observes that the strategy of opening up the economy to world markets does not appear to have had the anticipated effect on employment in the modern sector. In this context, the Committee would be grateful if the Government would provide, in its next report, more detailed information on the manner in which the measures to be taken in the main areas of economic policy are kept under review on the basis of their perceived or anticipated effect on employment, in accordance with *Articles 1 and 2 of the Convention*. The Committee hopes that the next report will contain complete information on the way in which the measures taken in respect of monetary, budget and exchange rate policies, investment policy, industrial policy, commercial policy and prices, incomes and wages policies help to further the employment goals of the Convention.

3. The Committee notes the detailed description of the series of active labour market policy measures implemented as part of the Employment and Income Creation Programme (PROGER), which aim, through the allocation of preferential financing, vocational training and technical assistance, to preserve and promote employment in informal sector activities, while facilitating their integration into the modern sector. The Committee, which has been informed of the ILO's participation in assessing the effectiveness of these measures, requests the Government to provide details of the results of this assessment. Furthermore, with reference to the relevant provisions of the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), the Committee notes the information on the measures taken, as part of the integrated programme of assistance for workers, to ensure better coordination between unemployment insurance and the training and labour exchange activities of the National Employment System (SINE). The Committee requests the Government to continue to provide information on the progress made in this respect and on any new measures designed to achieve better coordination between vocational training activities and employment prospects.

4. The Committee notes the information relating to the tripartite nature of the Advisory Board of the Assistance Fund for Workers (CODEFAT) and to the powers of the employment commissions established at state level. The Committee requests the Government to continue to provide information on the way in which employers' and workers' representatives are involved in preparing and applying employment policy measures at regional and local level. In addition, the Committee recalls that the consultations required under *Article 3* of the Convention should be extended to all the aspects of economic and social policy affecting employment and that, given the share of such persons in the labour force, the consultations should also involve representatives of the people employed in the rural and informal sectors. The Committee invites the Government to specify, in its next report, the progress made in giving full effect to this important provision of the Convention.

Canada (ratification: 1966)

1. With reference to its previous observation, the Committee took note of the Government's report for the period ending June 1996, which contains a set of useful information on the employment policies implemented, both at the federal and provincial levels. The Committee notes that the overall employment growth rate, which stood at 2.1 per cent in 1994, was only 1.6 per cent in 1995 and, according to the most recent data published by the OECD, was 1.3 per cent in 1996. The Government indicates that employment growth in the private sector, mainly in the form of full-time jobs, coincided with a significant reduction in employment in the public sector as a result of the programme designed to restructure and to reduce public expenditure. The reduction in the unemployment rate, from 10.4 per cent in 1994 to 9.5 per cent in 1995, was initially enhanced by a significant reduction in the activity participation rate, in particular among young people under the age of 25. However, the latter group continues to be subject to a significantly higher rate of unemployment than the average, and since that time the downward trend in unemployment seems to have been stemmed, with a rate of 9.7 per cent in 1996.

2. The Committee notes that the main orientations in the Government's economic policy, which it noted in its previous observation, and which aims in particular to re-establish balanced public finances, have been confirmed in the 1996 budget. In this regard, it observes that the progress made in reducing public deficits and controlling inflation has not for the time being been matched by equally significant progress in the fight against unemployment. In this context, the Committee recalls that under *Article 2 of the Convention* the measures to be adopted for attaining the objectives of full, productive and freely chosen employment must be determined and kept under review "within the framework of a coordinated economic and social policy". The Committee would be grateful if the Government would specify whether the effects on employment of the efforts made to stabilize the budget have been assessed. It would also like information on the perceived or anticipated effects on employment of the application of the North American Free Trade Agreement (NAFTA) and of the Internal Trade Agreement. Furthermore, the Committee notes that the main structural reform occurring during the period is designed, with the entry into force in July 1996 of the Employment Insurance Act, to achieve better coordination between the system of unemployment benefits and the active employment policy, by strengthening labour incentives and allocating increased resources to the measures designed to help people get back to work. The Committee invites the Government to provide details of any assessment available of the implementation of this reform.

3. The Committee notes with interest the substantial information provided on the implementation of the different active labour market policy measures. It notes that in its report the Government emphasizes the priority attached to the integration programmes for young people, and that an employment strategy for young people was to be announced in the autumn of 1996. In addition, the Committee notes the information to the effect that the responsibilities of the provincial governments should be increased within this strategy and, in more general terms, in respect of employment policy. The Committee would be grateful if the Government would specify the manner in which the new methods of cooperation between the federal Government and the provinces help to achieve a more effective employment policy, in particular in support of the regions with the highest unemployment rates.

Costa Rica (ratification: 1966)

The Committee notes that the Government's report contains no reply to its previous observation. It must therefore repeat its previous observation which read as follows:

> The Committee notes the Government's report for 1996. It also notes that at its 266th Session (June 1996), the Governing Body approved the report of the Committee that it had set up to examine the representation made by the Latin American Central of Workers (CLAT) under article 24 of the ILO Constitution alleging non-observance of the Convention by Costa Rica. The Governing Body invited the Government to provide, in its next report under article 22 of the Constitution, comprehensive information on the application of the Convention, and in particular:
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> (i) the effect on employment, either recorded or anticipated, of the macroeconomic policies implemented as part of the structural adjustment programme to reduce public spending;
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> (ii) the number of workers affected by the programme to reduce public employment, the measures taken to facilitate their reintegration into the private sector and the results achieved; and
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> (iii) the manner in which the representatives of the persons affected by the measures to be taken, and in particular employers' and workers' representatives, are consulted about employment policies.
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> The Committee requests the Government to provide the information requested in order to enable it to resume its examination of the application of the Convention at its next session.

Cuba (ratification: 1971)

1. The Committee took note of the Government's report for the period ending June 1996. The Government recalls that the circumstances prevailing in the country since the beginning of the decade have had a negative effect on employment. Among the measures adopted to face the labour market difficulties, it refers in particular to the reintegration of the economy into world markets by means of establishing joint ventures or economic associations, developing activities to generate short-term income (tourism, biotechnologies, pharmaceutical industry, food products), and authorizing basic units of cooperative agricultural production and self-employment. The Committee also notes the main investment, productivity and wages goals of the 1996 Plan. It would be grateful if the Government would specify in its next report to what extent these aims have been achieved and what effect they have had on labour market operation.

2. The Committee recalls that in its previous observation, it noted the measures taken to meet the needs of workers made redundant as a result of structural changes, as well as measures to support self-employment. It would be grateful if the Government would provide information on the development of self-employment. It also invites the

Government to provide any assessment available of the effect on productive activities of the application of Act No. 73 of 1994 relating to the tax system.

3. The Committee notes the adoption of Act No. 77 of 1995 relating to foreign investments which includes provisions governing labour, free zones and industrial parks. It requests the Government to provide, in its next report, information on the contribution made by foreign investments to the pursuit of the employment aims of the Convention. In addition, the Committee recalls that under *Article 1, paragraph 2(c), of the Convention*, an active employment policy shall aim to ensure "that there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for a job for which he is well suited". It feels that it is necessary to emphasize the contribution which must be made by the policy of promoting full, productive and freely chosen employment respecting this essential requirement, which is also enshrined in other Conventions on the fundamental human rights at work (Conventions Nos. 29, 105 and 111). In this respect, the Committee invites the Government to continue to provide detailed information on the way in which education and training policies are coordinated with employment prospects.

Czech Republic (ratification: 1993)

The Committee notes with regret that the Government's report has not been received. It hopes that a detailed report will be supplied for examination by the Committee at its next session and that it will contain full information on each provision of the Convention and in response to each question of the report form.

Denmark (ratification: 1970)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the Government's report for the period ending June 1994. It notes that most of the period was characterized by a low rate of economic growth, the continued decline in total employment and a rise in the unemployment rate, which flattened out at over 12 per cent in 1993 and 1994, in comparison with 11.2 per cent in 1992. According to OECD estimates, the livelier growth of the economy as of 1994 should make it possible to reduce the unemployment rate to 10.6 per cent in 1995.
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> 2. The Government emphasizes that the reduction in the level of unemployment and the improvement of the employment situation have been among its very highest priorities since it entered office in January 1993. In this respect, it refers to the implementation of an expansionist fiscal policy in order to stimulate economic activity and promote employment, without jeopardizing sound economic development. In this context, it refers to the reform of income tax, public investments in infrastructure, initiatives to support entrepreneurs and strengthen research and development activities, and the creation of additional places in education and training, particularly in the field of further training for adults. The Committee would be grateful if the Government would continue supplying information on the manner in which the principal strategies of economic policy contribute to the perusal of employment objectives.
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> 3. The Government also considers that the active labour market policy measures adopted have not been sufficient, for which reason it has commenced a reform with a view to harmonizing and decentralizing such measures as of January 1994, particularly through the adoption of the consolidation Act respecting the active labour market policy, which emphasizes the early identification of persons who are particularly threatened by long-term unemployment and a more effective individualized follow-up for jobseekers. The Act on leave is intended to promote temporary withdrawals from the labour market through training leave, parental leave and sabbatical leave with a view to a better distribution of employment, while at the same time contributing to the improvement of the skills and living standards of workers.

The Committee requests the Government to indicate the extent to which the implementation of these provisions has resulted in the creation of new jobs.

4. The Committee notes the changes in the procedures for the consultation of the persons affected by employment policies. It notes the establishment under the Ministry of Labour of a Labour Market Council, the advisory competence of which is extended to the formulation and follow-up of all labour market policy measures. The Committee also notes the establishment of the Training Council, with responsibility for submitting proposals to the Minister of Labour concerning law and policy in this field. The Committee requests the Government to provide information in its next report on the opinions issued by these advisory bodies, and to transmit any relevant examples of reports or recommendations that they have adopted.

Ecuador (ratification: 1972)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the Government's report for the period ending June 1994. With reference to its request made in the observation of 1994 on the procedures which have been adopted to guarantee that the measures which are taken to promote economic development and other economic and social objectives contribute to the attainment of the employment objectives set out in development programmes, the Government states its conviction that the success obtained in reducing inflation (from 60 per cent in 1992 it has dropped to 26 per cent in 1994) is a major achievement to improve the purchasing power of the population. The Government also states that the recovery in monetary reserves, the reduction in the budget deficit (which dropped to 0.4 per cent of the GDP in 1993) and, especially, the agreement with external creditors for renegotiation of the external debt, are contributing to the increase of productive foreign investment, which will reactivate the employment market in the country. The Committee notes the results achieved in re-establishing the growth of the GDP and reducing inflation but notes that unemployment is around 13 per cent while the underemployment level is about 50 per cent. On this matter, the Committee trusts that in its next report the Government will supply information on the results of the measures planned to solve the problem of unemployment and underemployment. In this respect, the Government should supplement its next report with replies to the questions concerning overall and sectoral development policies, labour market, educational and training policies set out in the report form approved by the Governing Body.
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> 2. With reference to the comments it has been making for several years, the Committee again notes that the Government recognizes the crucial importance of the views of the social partners on employment policy. The Government refers to the Action Plan 1993-96 in which it expresses its intention to discuss these matters with the sectors concerned, suggesting the implementation, for example, of activities strengthening wide participation and forming a labour consultation plan. This plan would be based on a tripartite agreement between employers, workers and the public sector, would have the economic support of UNDP and the technical support of the ILO. The Committee notes that this project was to begin in 1995 with the aim of negotiating tripartite agreements on policies for employment, wages and productivity to be carried out in the country. The Government adds that it is seeking to institutionalize machinery for dialogue and participation. The Committee trusts that it will be possible to carry out these initiatives suggested by the Government, which appear to comply with the purpose of the consultations required under *Article 3 of the Convention*. The Committee trusts that the Government will be able to supply indications on progress in this matter.
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> 3. The Committee notes the observations of October 1994 sent in by the Ecuadorian Central of Class Organizations (CEDOC) regarding application of the Convention. CEDOC considers that the Government's policy of encouraging state workers to resign and abolishing posts within the framework of a state reduction plan is contrary to application of the

Convention. Between 1993 and 1994 20,000 state workers were made redundant. Furthermore, CEDOC states that the Government does not consult workers' organizations — at least CEDOC — on the measures to be adopted on employment policy. The Government for its part indicates in its report (which states a copy has been sent to CEDOC) that programmes for retraining public employees who have left their jobs are being carried out while strong support is being given to micro-enterprise management as a real employment alternative for this group of workers. The Committee recalls that in its direct request of 1994 it included a question regarding the impact on the social costs of structural adjustment of the compensation plan formulated following the programme to reduce public expenditure and the privatization policy. In this context, the Committee notes Decree No. 2243 of 8 November 1994 which establishes a national training programme for integration into productive activities of public employees who participated in voluntary resignation programmes. It also notes the support provided to micro-enterprises through 225 million dollars received from the World Bank, Inter-American Development Bank and the Andean Development Corporation which allow favourable credits to be granted in the sector. The Committee requests the Government in its next report to specify the results obtained from these measures which seem designed to align labour supply and demand as a result of the structural changes made in particular areas such as the public sector. The Committee trusts that the representatives of the persons affected by the employment reduction measures will be consulted, within the meaning of the Convention, and will be involved in the consultation referred to by the Government in its report.

4. In a direct request, the Committee requests the Government to include in its next report information on some aspects of the application of the Convention such as the effects of liberalization of trade on employment, the incomes policy, the action of the Social Front in formulation of the employment policy, compensatory measures adopted in the framework of employment programmes, technical cooperation received from the Office, job creation through part-time contracts and free zones.

France (ratification: 1971)

1. The Committee took note of the Government's report for the period ending May 1997, which contains information in response to its previous observation. It also notes a communication from the General Confederation of Labour (CGT) sent by the Government in August 1997. The Committee notes with concern that the information supplied by the Government and the most recent data published by the OECD reveal the persistence of a high level of unemployment. Although the upturn in economic activity led to employment growth of 1.2 per cent in 1994 and 0.9 per cent in 1995 and brought down the unemployment rate to 11.7 per cent in 1995 as compared to 12.3 per cent in 1994, this slight improvement in the employment situation has not been continued. With the slowdown in growth and the continued 0.8 per cent annual increase in the active population, employment again declined in 1996, while the unemployment rate reached 12.4 per cent, which is considerably higher than the average rate in the European Union, as the CGT stresses. Furthermore, long-term unemployment continues to account for almost 40 per cent of total unemployment, and the unemployment rate among young people under the age of 25 is over 30 per cent despite the continued decline in the participation rate of this age group. The CGT also draws attention to the growing proportion of various forms of precarious employment, including involuntary part-time work.

2. The Government states that unemployment is still the main challenge facing the economy, even if growth has become structurally more abundant in terms of jobs. It stresses that the present budgetary and monetary polices provide the conditions for growth with job creation. The fact that inflation is under control and external surpluses remain high shows that the economy is competitive, and this, together with the effort to improve public finances, creates the necessary conditions for a sustained drop in interest rates

conducive to investment and consumption. In this context, the Government indicates that the main aspects of its employment policy concern improving enterprise competitiveness through lower labour costs, job sharing through the organization and reduction of working time negotiated by the social partners, the promotion of personal service jobs through tax incentives and support to the development of small and medium-sized enterprises.

3. Disagreeing entirely with the Government's analysis, the CGT describes as "deflationist" the policy conducted to satisfy the criteria for access to the single European currency. Seriously affecting employees, wage adjustments and heavier taxation, so as to remedy the poor state of the public finances, are preventing a return to growth of domestic demand. While investment by enterprises is declining, at the same time profits are increasing. The trade union considers that a policy which pursues the employment objectives of the Convention must involve an increase in incomes in order to stimulate demand, a substantial reduction in working time and priority for investment in training and research. The Committee, for its part, regrets to note that progress made in redressing the macroeconomic balance, which the Government presents as a prerequisite for a sustained return to growth and employment, has not yet been reflected in an improvement in the labour market situation.

4. The Committee also notes that the CGT refers to the first measures taken by the Government since June 1997 with regard to employment policy. It notes in particular that a conference on wages, employment and the reduction of working time was to begin in September 1997. It also notes the adoption of Act No. 97-740 of 16 October 1997 concerning the development of activities for the employment of young people. The Committee would be grateful if the Government would provide detailed information on the new measures taken or envisaged and their effect, either noted or expected, on the employment situation. More generally, it asks the Government to indicate how the principal measures are decided on and kept under review "within the framework of a coordinated economic and social policy", to ensure that the promotion of full, productive and freely chosen employment remains a "major goal", in accordance with *Articles 1 and 2 of the Convention*.

5. In its report the Government gives a detailed description of the various active labour market policy measures, which, however, concern only 1995. The CGT considers that these measures, whose cost is considerable, are ineffective in terms of reducing unemployment and contribute to the development of precarious forms of employment. The Committee notes in this connection the main conclusions and recommendations of the independent evaluation body set up by the Five-Year Act of 20 December 1993 respecting labour, employment and vocational training. With regard to "employment-solidarity contracts" and "back-to-work contracts" (replaced in 1995 by "employment-initiative contracts"), the above body notes that, in more than 50 per cent of cases, people were recruited without assistance, which leads it to question the relevance of such arrangements and to recommend that results should be constantly evaluated in terms of their ultimate objectives (reducing unemployment among young people, for example) rather than the number of subsidies allocated. With regard to measures for lowering the cost of labour by reducing contributions on low wages, the above body stresses that such measures cannot solve on a lasting basis the difficulties encountered by the least skilled workers. Furthermore, the evaluation highlights the contribution of such measures to the development of a segment of the labour market in which employment conditions are less favourable than those offered by wage employment under the ordinary law. Generally speaking, the above body notes that these measures are unstable and frequently modified, and account is not always taken of available assessment findings. The Committee notes

that these conclusions and recommendations are largely consistent with its own concern, which it has been expressing for years, that the various labour market policy programmes should be regularly assessed and adapted in the light of their contribution to the effective and lasting integration of their beneficiaries in employment. It asks the Government to describe the measures taken to this end in its next report.

Hungary (ratification: 1969)

The Committee notes that the Governing Body, at its 270th Session (November 1997), entrusted to a tripartite committee the examination of a representation made under article 24 of the ILO Constitution by the National Federation of Workers' Councils (NFWC), alleging non-observance of the Convention by Hungary. In accordance with its usual practice, the Committee is suspending its comments on application of the Convention pending the adoption by the Governing Body of the conclusions and recommendations of the above-mentioned committee.

Ireland (ratification: 1965)

1. The Committee took note of the Government's report for the period ending June 1996. It notes that, according to the most recent OECD data, the upward trend in the employment situation already visible at the end of the previous period has been clearly confirmed. With the marked expansion of economic activity, total employment growth reached 3.5 per cent in 1994, 4.4 per cent in 1995 and 4 per cent in 1996. Despite the continued growth of the active population, the unemployment rate was brought down to 11.3 per cent in 1996 as compared to 14.2 per cent in 1994. The Government nevertheless considers that the unemployment rate is still unacceptably high and that in particular there is a high incidence of long-term unemployment which accounts for about 60 per cent of total unemployment and affects more particularly low-skilled workers and workers over the age of 45.

2. The Government states that its policy to achieve full employment in the future is still based on the Programme for Competitiveness and Work and the National Development Plan 1994-99, both agreed with the social partners. The Committee notes however that, for the most part, the information in the report covers only active labour market, social protection and training measures. It would be grateful if the Government would also supply information, as it has done in the past, on the components of general economic policy which most affect employment. In this connection, the Committee notes that the significant decline in unemployment was achieved while inflation and budget deficit were kept under control. It asks the Government to describe in its next report how measures taken in areas such as monetary, budget, exchange rate and incomes policies contribute to the pursuit of the employment objectives of the Convention.

3. The Committee notes the description of the active labour market policy measures which aim in particular to make work more attractive through income tax and social insurance adjustments, and to promote the reintegration of the long-term unemployed through public employment programmes, the Back-to-Work Allowance Scheme and the Employers' Social Insurance Exemption Scheme. The Committee refers to its previous request and asks the Government in its next report to provide any available evaluations of the effectiveness of each of the numerous programmes pursued in terms of the effective and lasting integration in employment of the beneficiaries. More generally, it hopes that the measures taken as part of general economic policy and labour market policy will contribute to further confirming the trend towards lower unemployment.

Morocco (ratification: 1979)

1. The Committee took note of the Government's report which replies only partly to its previous observation. From the data published in the 1996 *Statistical Yearbook*, the Committee notes that the situation of employment and unemployment is still characterized by profound discrepancies between the urban and rural populations and the different age groups. The average rate of unemployment was 16 per cent in 1995, but reached 22.9 per cent in urban areas as against 8.5 per cent in the countryside. Unemployment particularly affects young people under 25 years old in the urban environment for whom there was an unemployment rate of 37.3 per cent in 1995. The Committee observes, moreover, that with over a third of the active population employed in agriculture, very wide annual variations in the growth rate of the economy and of employment depend largely on climatic conditions.

2. The Government states that its employment strategy relies chiefly on promotion of investment. It refers particularly to the fiscal incentives provided under Basic Act No. 18-95, as well as to the measures laid down in the 1997-98 budget. In addition, it considers that the liberalization measures in external trade, particularly within the partnership agreement with the European Union, should have a positive impact on employment. Referring to its previous requests on this subject, the Committee hopes to find in the next report more precise information on how the main lines of economic policy, particularly budgetary, monetary and trade policies, contribute effectively "as a major goal" to the promotion of full, productive and freely chosen employment. In this respect, the Committee regrets that the Government has not supplied the information requested regarding the employment objectives of the Social and Economic Organization Plan 1993-97. It requests the Government to describe the achievements of this Plan in the field of employment and to indicate the objectives of the new Plan which is being prepared. The Committee would also be grateful if the Government would supply details on the implementation of the medium-term financial strategy adopted in 1995 in consultation with the World Bank, as well as on privatization measures.

3. The Committee notes the indications on efforts made to develop vocational training. It requests the Government to specify the measures taken to ensure better adaptation of education and training policies with employment prospects in a context characterized simultaneously by the persistence of a high unemployment rate for well-qualified people and of a relatively low level of school attendance. The Government may find it useful in this context to refer to the Convention (No. 142) and Recommendation (No. 150) on human resources development, 1975. The Committee also notes the information relating to the number of beneficiaries of incentives for hiring graduates and providing assistance in setting up enterprises. It requests the Government to supply any available assessment regarding the effectiveness of these measures. Noting the progress made in extending the employment services network, the Committee requests the Government to supply statistical data on the nature and volume of its activities.

4. *Article 3 of the Convention*. The Committee notes with interest the 1995 Annual Report of the National Council for Youth and the Future supplied by the Government. With reference to its previous observations, it would be grateful if the Government would also supply the information already requested on the establishment and respective competence of the Economic and Social Council and the Advisory Council to Pursue Social Dialogue.

5. *Part V of the report form*. The Committee again requests the Government to indicate the action that has been taken or is envisaged as a result of the ILO assistance or

advice received in the area of employment and training, or to indicate the factors which have prevented or delayed such action.

Netherlands (ratification: 1967)

1. The Committee took note of the Government's report for the period ending June 1996. It notes that, according to the data published by the OECD, total employment increased more rapidly than the active population which itself advanced quickly during the period. The Committee notes that the decrease in the unemployment rate, from 7.6 per cent in 1994 to 6.7 per cent in 1996, took place in the context of a reduction in the different forms of "non-employment" which were noted in its previous observation. The Committee observes, however, that the persistent nature of certain characteristics hinder the progress of the Dutch labour market towards full employment. In particular, it notes that, according to the OECD, the number of persons without employment and receiving invalidity benefit or who have taken early retirement, appears to represent, in terms equivalent to full-time employment, more than 10 per cent of the potential active population. In addition, the growth in employment must be largely attributed to the increase in part-time employment which represents almost two-thirds of women's employment. It is not clear to what extent such a form of employment has been freely chosen by the women concerned. Finally, long-term unemployment, which above all affects the least skilled people, continues to represent almost half of total unemployment.

2. The Government explains that its employment policy is based on the structural reinforcement of the economy, the reduction of the tax burden and social contributions, wage restraint, the redistribution of work and the increased flexibility of regulations. It describes the measures implemented in order to reduce non-wage labour costs, in particular to promote the hiring of low-paid workers and the long-term unemployed. The Government also indicates that, in order to meet social needs which have not been satisfied, jobs designed for the long-term unemployed are created in the public sector. Measures to "activate" unemployment benefits, which allow the temporary conversion of such benefits into subsidies for the creation of new jobs, are the subject of current experiments. In addition, the new Working Hours Act encourages flexibility, so as to enable workers to combine more easily the performance of paid work with other responsibilities. In the civil service, the redistribution of work is encouraged by a reduction in working hours, the availability of part-time work and the replacement of workers on parental leave by disadvantaged persons on the labour market, such as women, immigrants, disabled persons or the long-term unemployed.

3. The Committee notes with interest this series of measures, some of which are innovative. It notes, however, that while promoting a return to work, these measures also help to encourage the growth of part-time employment which is already of considerable importance. The Committee invites the Government to specify the manner in which it envisages the implementation of such measures in relation to the objectives of the Convention and, in particular, to achieving an increase in living standards. The Committee would be grateful if the Government would describe the measures taken to ensure that part-time workers enjoy the same rights and have the same career prospects as full-time workers. In this regard, the Government may find it useful to refer to the provisions of the Part-Time Work Convention (No. 175) and the Part-Time Work Recommendation (No. 182), 1994. Finally, the Committee hopes that the Government will soon be able to report a significant reduction in long-term unemployment.

4. With reference to the requests it has been making in this regard for many years, the Committee hopes that the Government's next report will contain full particulars of the

way in which the main trends in economic policy, in particular in the areas of monetary and budgetary policy, help to promote employment. The Committee would be grateful if the Government would also provide more detailed information on the consultations held concerning employment policies, in accordance with *Article 3 of the Convention*.

Norway (ratification: 1966)

1. The Committee took note of the Government's report for the period ending June 1996, which describes the main trends in employment and provides some more detailed information on the number of beneficiaries of active labour market policy measures. Supplemented by the data published by the OECD, the report demonstrates an acceleration during the period in employment growth. The accompanying upturn in activity rates has, however, lessened the reduction in unemployment rates, from 5.4 per cent in 1994 and 1995 to 4.9 per cent in 1996.

2. With reference to its previous observation, in which it noted with interest the information provided by the Government in its report on its economic strategy for the promotion of growth, competitiveness and employment, the Committee hopes that the Government will provide, in its future reports, the information necessary to assess the manner in which the measures taken with a view to promoting full employment are decided and kept under review "within the framework of a coordinated economic and social policy" and in consultation with the representatives of the persons affected, in accordance with *Articles 2 and 3 of the Convention*. In particular, it requests the Government to provide the information required in the report form on the manner in which the measures taken, in areas such as budgetary and monetary policy, investment policy and incomes policy, help to further employment aims. Noting that the scope of the active labour market policy measures has been reduced during the period in line with the decrease in unemployment, the Committee invites the Government to provide any assessment available of the effectiveness of the measures implemented towards the effective and lasting integration of their beneficiaries into employment. It also reiterates its interest in obtaining any information on the manner in which the unemployment benefit scheme is coordinated with employment policy.

Paraguay (ratification: 1969)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the Government's report received in January 1995. The Government indicates that the labour market has been gradually modernizing at a slow but steady pace which is reflected positively in the reduction of self-employed workers and an increase in the number of wage-earners. The national level of unemployment is relatively low but underemployment affects some 48 per cent of the labour force and constitutes "the main problem on the labour market". The reasons for underemployment are demographic and economic, since the economic infrastructure of the formal sector cannot satisfy job demands adequately and the informal sector serves as a refuge for a large percentage of the labour force. Since underemployment has a greater effect on workers in the rural sector, the Government's efforts are concentrated in this area. An economic and social development programme for 1994-98 has the target of creating jobs in more productive activities, increasing productivity and income in backward activities (small urban businesses and micro-businesses and small rural producers), and the broadening of the job security network. The Committee would be grateful if the Government would specify in its next report if there have been particular difficulties in reaching the employment objectives set out in this programme and indicate to what extent these difficulties have been overcome. It would greatly appreciate

information on the situation, level and trends in employment, unemployment and underemployment in the country as a whole and on the extent to which it affects particular categories of workers such as women, young people, indigenous people and rural workers who have difficulty in finding lasting employment and how those workers are affected by industrial restructuring processes.

2. With reference to the comments its has been making for several years, the Committee notes that information has been included in the report on a policy of dialogue and consultation promoted by the Ministry of Justice and Labour. A tripartite negotiating board has been set up whose central themes are wages, the formulation and proposal of employment programmes, and social security. The Committee welcomes this progress in the application of *Article 3 of the Convention* which lays down that representatives of the persons affected shall be consulted concerning the measures to be taken to promote the objectives of full, productive and freely chosen employment. It would be particularly useful for a labour market such as that described by the Government that the consultations required under the Convention should also take place with representatives of workers from the informal and rural sectors and that their participation might be envisaged in the formal consultation machinery mentioned in the report. The Committee would be grateful if the Government would include indications on any new progress made in this matter.

3. In reply to previous comments, the Government states that its prime objective is the development of human resources through training and improvement of employment opportunities. Workers are offered free vocational guidance and training services by the National Employment Service, the Programme of Associated Young Persons Enterprises and the National Service for Vocational Promotion. The Government states that these efforts claim not only to coordinate occupational training policies and activities with real employment prospects but also to ensure that young people in particular and workers in general achieve effective integration into the labour market with a lasting job and/or full productive activity where they can develop to the maximum their potential, as required in Convention No. 122, Convention No. 142 and Recommendation No. 150 on the development of human resources, 1975. The Committee requests the Government to continue supplying information on specific developments in the activities mentioned above in order to ensure that workers who have benefited from the programmes can access the labour market and find lasting employment.

4. In a direct request, the Committee is asking the Government certain questions on other aspects of the application of the Convention related to compilation and analysis of statistics, rural employment and employment in the informal sector.

Peru (ratification: 1967)

1. The Committee took note of the Government's report relating to the period ending September 1997 which was supplied in reply to the Committee's previous observation. The Committee also notes a communication from the Trade Union of Civil Construction Workers of Lima and Balnearios on application of the Convention.

2. The Government states that in a context characterized by strong economic growth since 1993 and remarkable progress in the fight against inflation, the evolution of the labour market has been relatively favourable. It states, on the basis of statistics relating to the Lima metropolitan area, that there is a slight reduction in unemployment and underemployment rates as well as significant growth in suitable employment as a share of total employment. It indicates, furthermore, that real wage increases over the period are an indication of a more general improvement in the employment situation. The Government considers, however, that because of the extent and structural nature of labour market problems, a large proportion of the active population will continue to be engaged in the informal sector. In this regard, the Committee notes that national surveys on employment have been carried out since 1996 for the purpose of collecting the necessary information on the situation of employment, underemployment and unemployment in the

country. It would be grateful if the Government would supply in its next report the data collected through these surveys and continue to supply information on any new measures taken with a view to improving knowledge of labour market trends. The Committee also requests the Government to supply more detailed information on the manner in which the measures taken concerning general economic policy contribute to promoting productive and freely chosen employment and are decided on and kept under review "in the framework of a coordinated economic and social policy", in accordance with *Articles 1 and 2 of the Convention*.

3. The Committee notes the information on the implementation of various labour market policy programmes supplied at its request. Noting particularly the importance of the Programme for the Promotion of Self-employment and Micro-enterprises (PRODAME), it requests the Government to continue to supply full information on the programmes implemented and their results. The Committee recalls, furthermore, that subsequent to the recommendations approved by the Governing Body at its 267th Session (November 1996) in regard to its tripartite examination of representations alleging non-observance of the Convention, it also requested the Government to provide full information on any available surveys on the results obtained by the youth training agreements and any measures taken or envisaged to ensure that the application of the legislative provisions with respect to employment contracts subject to special conditions, the promotion of self-employment and special enterprises contribute effectively to the creation of new jobs. In regard to measures for the integration of young people, the Committee notes the detailed statistics on the number and duration of vocational training agreements and pre-work traineeships concluded. It recalls, nevertheless, the concern expressed by the Governing Body Tripartite Committee regarding the considerable extension of the possibilities of working under youth vocational training agreements by raising the age limit to 25 years, extending its maximum duration to 36 months and raising the maximum number authorized by the enterprise to 30 per cent. The Committee hopes that the Government will take advantage of its good statistical information on the use of such contracts to proceed, as suggested in paragraph 17 of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), by careful monitoring "to ensure that they result in beneficial effects on young people's employment" and that it is consistent "with the conditions of employment established under national law and practice". The Committee emphasizes that it is the Government's responsibility to ensure that this training arrangement does not lose sight of its objective to insert, in an effective and lasting way, those trained into suitable employment, and requests the Government to describe the measures taken to this effect. Similarly, the Committee notes the statistical data regarding employment contracts subject to special conditions, but regrets that the Government does not provide the information requested on the measures taken or envisaged to ensure that the application of the provisions concerning these contracts and enterprises contributes effectively to the creation of new jobs rather than to the redistribution, on less secure conditions, of existing jobs.

4. More generally, the Committee notes, following the Governing Body, that the Government has made adjustments to the labour legislation a vital component of its employment policy. It notes that, according to the Trade Union of Civil Construction Workers of Lima and Balnearios, the systematic "flexibilization" of labour law carried out since the adoption of the 1991 Promotion of Employment Act has had a major effect of increasing insecurity and jeopardizing the rights of workers without leading to the creation of new jobs. In this matter, the Committee recalls that under the Convention the employment policy shall take due account of "the mutual relationships between

employment objectives and other economic and social objectives", and that a labour policy in keeping with the Convention should not result in jeopardizing, directly or indirectly, the rights protected by other international labour Conventions. It trusts that, with this in mind, the Government will take care to ensure an equitable distribution of the costs and social advantages of the reform under way among all the persons affected.

5. *Article 3.* The Government indicates that it has supplied the information requested on the consultations held to give effect to this provision of the Convention in its report on the application of the Employment Service Convention, 1948 (No. 88). As the Committee notes in its observation on that Convention, however, the Government has made no progress in establishing the advisory committees to the public employment service. In addition, the Committee recalls that the application of the provisions of Convention No. 88 providing for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment service policy does not itself give effect to the provisions of this Article of Convention No. 122, which provides that representatives of the persons affected by the measures shall be consulted concerning all employment policies, not only the public employment service policy. In the Committee's view, the absence of any consultation of the social partners on employment policies is of particular concern at a time when the Government is implementing wide-ranging reforms of labour law for the stated aim of promoting employment. In this respect, the Committee believes that the Government should consider establishing broad social dialogue as the necessary prerequisite for the success of its policy. The Committee is bound to emphasize once again the particular relevance of this provision which requires that representatives of all the persons affected should be consulted on employment policies "with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies". The Committee trusts that the Government will take the necessary measures to this effect without delay and that it will find proof of real progress in the next report.

6. Finally, the Committee was informed of the activities of ILO advice and technical cooperation in the field of promotion of employment. It would be grateful if the Government would supply information on the manner in which it feels these activities can contribute to better application of the Convention *(Part V of the report form)*.

Poland (ratification: 1966)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the report of the Committee set up to examine the representation made in 1993 under article 24 of the ILO Constitution by the All-Poland Trade Union Alliance (OPZZ), alleging non-observance of the Convention by Poland, which was approved by the Governing Body as its 265th Session in March 1966 (document GB.265/12/5). It also notes the Government's brief report for the period ending June 1966. This report describes a number of changes particularly as regards the employment of graduates, unemployment benefit and the management of regional labour markets. However, the Committee notes that the report does not contain all the information requested by the Governing Body.
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> The Committee also refers to its previous observation and direct request and trusts that the Government's next report will, in addition to the description of the situation and trends of employment, underemployment and unemployment during the period under consideration, contain all the information required in accordance with the recommendations of the Committee set up by the Governing Body namely:

- complete and detailed information on the results obtained through the various labour market policy measures that are implemented, with an indication of any shortcomings or difficulties that it may have encountered and the manner in which it proposes to deal with them, and the use it has made of ILO technical cooperation projects and other international technical assistance to promote employment and reduce unemployment;
- a description of how account is taken of employment objectives when general economic and social policy decisions are taken, and complete information in reply to the questions in the report form under *Articles 1 and 2 of the Convention;*
- complete information on the manner in which the representatives of the persons affected are consulted, particularly in the Higher Employment Council and in accordance with *Article 3 of the Convention*, on all aspects of economic policy which affect the employment market;
- the manner in which the unemployment compensation policy contributes to the pursuit of the Convention's objectives, particularly as regards the planned introduction of an unemployment insurance system.

The Committee suggests that the Government remain in contact with the competent services of the ILO, and particularly the multidisciplinary team in Budapest, in order to obtain, where necessary, their technical support in relation to the above matters.

Portugal (ratification: 1981)

1. The Committee took note of the Government's report for the period ending June 1996 which contains detailed information in reply to its previous observation. Basing itself also on data published by OECD, the Committee notes that the slight employment growth since 1996 was insufficient to compensate for its earlier drop while the unemployment rate continued to rise, from 6.9 per cent in 1994 to 7.3 per cent in 1996. In addition, the characteristics of the spread of unemployment continue to cause concern. Unemployment has increased particularly strongly in industry and regional discrepancies have become more marked. There has been a net drop in the activity rates of young people more of whom continue in education. However, those under 25 still suffer an unemployment rate more than twice the overall rate. Equally significantly the incidence of long-term unemployment has worsened with over half of registered unemployed being out of work for more than a year.

2. The Government indicates that the main objectives in its medium-term social and economic development strategy include obtaining a higher level of economic growth so permitting the creation of skilled, well-paid jobs, and strengthening the competitiveness of the economy whilst reducing state intervention. The Committee notes that in the framework of the convergence programme aimed at accession to the economic and monetary union, emphasis has been placed on price and exchange rate stability and on the control of public expenditure. In this respect, the Committee notes that the results obtained in terms of reducing inflation and decreasing the budget deficit have been accompanied by moderate growth but with a stagnation of employment. The Government refers, furthermore, to the conclusion in January 1996 of the Short-term Social Consensus Agreement in which the social partners have agreed on the principles which should regulate salary policy, employment policy and industrial relations. The Committee also notes the objectives of the 1994-99 Regional Development Plan designed to promote the creation of jobs in the sectors most exposed to international competition by improving workers' initial and further training. The Committee would be grateful if the Government would continue to supply detailed information on how the measures to be adopted for attaining the employment objectives are determined and reviewed regularly, within the

framework of a coordinated economic and social policy and in consultation with the social partners, in accordance with *Articles 2 and 3 of the Convention*.

3. With reference to its previous observation, the Committee notes the data regarding the number of beneficiaries of vocational integration and training programmes for employment, as well as local job-creation initiatives. It would be grateful if the Government would supply any existing assessment of the results obtained by these various programmes in terms of effective and lasting integration of those concerned in employment, particularly with regard to young people and the long-term unemployed.

Slovenia (ratification: 1992)

1. The Committee took note with interest of the Government's report for the period 1 July 1994 to 30 September 1996, which contains a series of detailed information and includes comments by the Association of Free Trade Unions of Slovenia.

2. The Committee notes that despite the fact that economic activity has continued to grow at a relatively high rate since 1993, the employment situation has not improved significantly during this period. The registered unemployment rate, which stood at 14.4 per cent at the end of 1994, was still 13.7 per cent in September 1996. The Government indicates that the processes of restructuring and adjustment of production to market economy conditions are continuing and that, although the demand for labour has increased since the economy came out of recession, this is expressed in more than 60 per cent of cases in the form of offers of temporary employment. In addition, the inappropriate nature of qualifications offered relative to those required, the proportion of long-term unemployment which represents over half of all unemployment and particularly affects older and unskilled workers, along with the strong regional disparities, tend to confirm the structural nature of the labour market problems.

3. Furthermore, the Committee observes the significant discrepancy between the registered rate of unemployment, established on the basis of data provided by the National Employment Office, and the much lower rate resulting from the labour force surveys conducted by the Statistical Office. In the view of the Association of Free Trade Unions, the contradiction between statistics showing a continuous fall in employment and an apparent improvement in the unemployment figures is due primarily to the removal from the unemployment registers of people who are recruited without a contract; this practice is illegal but the Labour Inspectorate appears to be powerless to combat it. The trade union emphasizes that the number of unemployed people who have lost their jobs following the bankruptcy of their employers, or as a result of privatization, is on the increase. It considers that industrial workers who lose their jobs have no other solution than to withdraw from the labour market in order to receive a retirement pension, which explains the widening gap between the size of the population of working age and that of the population actually working. The Committee invites the Government to provide details of its own analyses on each of these points, by indicating in its next report the factors which explain the discrepancy between the results obtained by the two statistical assessment methods for unemployment, the considerable use of temporary employment and the apparent growth in different types of informal employment, by providing information on the consequences of privatization on employment and by specifying its policy with regard to the early withdrawal from the labour market of workers who have lost their jobs.

4. In its report the Government describes the series of active employment policy measures which are implemented to preserve existing employment in the form of preventive measures to support, in particular, export-based or highly labour-intensive

activities, to promote self-employment and to respond to the particular difficulties of the long-term unemployed. It indicates that since April 1996, these measures have been implemented by means of public tenders which allow a more effective allocation of subsidies and co-financing. In addition, a subsidy for the transformation of temporary jobs into indefinite employment has been introduced. While observing the large number of beneficiaries of such measures, the Committee notes that, according to the Association of Free Trade Unions, no assessment of the effectiveness of each of the measures has been conducted. Furthermore, the organization considers that the funding allocated to them is insufficient. The Committee would be grateful if the Government would provide details of any assessment available of the results obtained by these measures in terms of the effective and lasting integration of their beneficiaries into employment.

5. The Association of Free Trade Unions regrets that the programme of active employment policy measures was adopted in April 1996 without the cooperation of the social partners and without having been discussed by the Economic and Social Council. For its part, the Government points out that the programme was devised on the basis of the 1996 Social Agreement reached with the trade unions, including the Association of Free Trade Unions. The Committee invites the Government to reconsider the procedures adopted in order to ensure regular and effective consultation with the representatives of those affected by the employment policy measures, and in particular representatives of employers and workers, in accordance with *Article 3 of the Convention*. It also requests the Government to indicate, whether the Economic and Social Council has been granted the status of a legal institution, as provided for in the 1996 agreement, and whether issues relating to employment policy, as defined in the Convention, are referred to it.

Sweden (ratification: 1965)

1. The Committee took note of the Government's report for the period ending June 1996 and of the information it contains in reply to its previous observation. It also notes a communication in which the Swedish Trade Union Confederation (LO) comments generally on the report.

2. The statistical data supplied by the Government, supplemented by the data published by OECD, do not show any improvement in the employment situation during the period. The resumed economic growth in 1994 and 1995 was not accompanied by any increase in the volume of employment so as to compensate for the losses recorded since the beginning of the decade. Total employment fell further by 0.6 per cent in 1996 and the unemployment rate, after a slight drop in 1995, returned to the level of 8 per cent which it reached in 1993. In addition, about 5 per cent of the active population was engaged in a labour market policy programme in 1996. The Committee notes that unemployment seems to firmly stabilize at the high level reached during the earlier recession phase.

3. In this worrying context, the Government indicates that it has fixed its main priority as reducing unemployment by half by the end of the year 2000. It considers, however, that employment policy is restricted by the state of government finance and that sound national finances and stable prices are essential to achieve long-term sustained growth and higher employment levels. In this regard, the Government emphasizes that it is necessary to reduce the public deficit in order to lower interest rates. In the view of the Swedish Trade Union Confederation, however, although budgetary balance is being achieved, the maintenance of an extremely restrictive economic policy has contributed directly to shrinking employment and increased unemployment. The Committee, which notes that domestic demand has remained relatively static during the period, requests the Government to supply its own assessment of the impact of its budgetary stabilization

programme on economic activity and, in particular, employment. More generally, it would be grateful if the Government would indicate whether, in view of the results obtained in controlling inflation and deficits, and also the persistence of a high unemployment level, it intends to review the main objectives of its economic policy with respect to its actual or expected impact on employment opportunities, in accordance with *Articles 1 and 2 of the Convention.*

4. The Committee notes with interest the substantial information provided by the Government on the implementation of its labour market policy. It notes that emphasis continues to be placed on the prevention of long-term unemployment in order to safeguard the employability of jobseekers and that new measures were to be implemented in 1997, including temporary employment programmes for the older unemployed, grants for women wishing to set up in business or education subsidies. The Committee requests the Government to continue to supply detailed information on these programmes and the evaluation of the results they achieve. In regard to young persons, the Government states that it intends to provide them with better training by delaying their entry into the labour market and encouraging higher education studies. The Committee requests the Government to continue to supply information on how its education and training policies are coordinated with employment prospects. Finally, the Committee notes the changes which were to be introduced in 1998 with respect to conditions of granting unemployment insurance benefit in order to promote active jobseeking. It would be grateful if the Government would continue to supply information on the measures taken with a view to providing better coordination between the unemployment protection system and the active employment policy, taking into account the relevant provisions of the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), and the Committee's comments on their application.

5. With reference to its previous observations, the Committee notes the indications on the activities of the Advisory Council established in the Swedish National Labour Market Administration (AMS). It is bound to recall again that the consultations required under *Article 3 of the Convention* should not be restricted to labour market policy in the narrow sense but should be extended to all aspects of the economic and social policy which have an impact on employment. It hopes to find in the Government's next report information on how this important provision of the Convention is applied.

Tunisia (ratification: 1966)

1. The Committee took note of the Government's report for 1996 and the information it contains in reply to its previous observation. It regrets, however, that the report does not contain statistical data allowing appreciation of the situation and trends in the active population, employment, underemployment and unemployment. The Committee requests the Government to supply any data or estimates available on this subject in its next report, indicating how they are updated in the intervals separating national surveys on population and employment. Recalling that the VIIIth Economic and Social Development Plan envisaged achieving a reduction of unemployment rate to 13 per cent in 1996, it requests the Government to indicate the type of difficulties encountered in achieving this objective, indicating to what extent they have been overcome. The Committee would be grateful if the Government would describe the growth and employment objectives of the IXth Plan (1997-2001) and supply the relevant extracts.

2. In its report, the Government provides information which relates mostly to the reforms completed or in progress in order to strengthen the initial and further vocational training system and to adapt it to the new requirements of the economy. The Committee

recalls its interest in information on other aspects of economic and social policy having an impact on employment. It requests the Government to indicate in its next report how the measures taken in fields such as investment policy, budgetary and monetary policies and price, incomes and wages policies contribute to promoting full, productive and freely chosen employment. In addition, the Committee again asks the Government to indicate the measures that have been taken or are envisaged to ensure that the implementation of the recent association agreement concluded with the European Community has a beneficial impact on the employment situation.

3. The Committee notes the indications on the number of beneficiaries of measures for the integration of young people into the labour market and the implementation of the integrated programme of support for the creation of employment in backward regions. It would be grateful if the Government would continue to provide information, as detailed as possible, on the implementation of the various labour market policy measures, and supply any available evaluation of their results in terms of effective and lasting integration in employment of those concerned.

4. *Article 3 of the Convention.* The Government indicates that the National Council for Vocational Training and Employment, in which representatives of employers' and workers' organizations participate, contributes to the formulation of development plans for employment and vocational training. It adds that the Economic and Social Council is consulted on the General National Economic and Social Development Plan and will examine the draft legislative texts relating to employment. The Committee recalls that under this important provision of the Convention, representatives of all the sectors concerned must be consulted on employment policies, in both formulating and implementing the policies. It requests the Government to supply examples of recent consultations in the bodies it mentions, specifying the opinions received and how they were taken into account.

Turkey (ratification: 1977)

1. The Committee took note of the Government's report for the period ending June 1996, which contains information in reply to its previous observation and transmits comments made by the Turkish Confederation of Employers' Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-IŞ). The Committee notes that after a period of sharp recession in 1994, in 1995 and 1996 the economy has had an annual growth rate of around 7 per cent. OECD data show that the volume of total employment increased by 2.5 per cent in 1995 and 3.1 per cent in 1996, while the active population increased by 1.8 and 2 per cent in the same years. According to the October 1996 Labour Force Survey, the rate of unemployment stood at 5.8 per cent of the labour force and that of underemployment at 6.2 per cent. Although these figures show a significant improvement in the employment situation as compared with the previous period, the TISK emphasizes the importance of the structural component of unemployment as well as the particular impact of long-term unemployment and unemployment among young people. The Confederation also draws attention to the serious problem of underemployment, especially in the form of poorly productive and low-paid employment in the informal sector.

2. The Government indicates that implementation of the April 1994 stabilization programme has restored confidence in business activity and brought about an environment more conducive to employment creation, which remains a priority. The customs union with the European Community, which has been in effect since January 1996, should cause recession in employment in the sectors which are not competitive and have been protected

in the past, but should improve export and employment prospects in other sectors. In general, the customs union should boost competitiveness in the economy even though it does not lead to an increase in employment in the very short-term. The Government emphasizes that its policy in regard to employment and combating unemployment relies on a coordinated set of economic and social measures which, in the framework of the Seventh Five-Year Development Plan (1996-2000), highlight human resources development and structural reforms. The TISK, for its part, considers that macroeconomic stability, through the control of deficits, tax and social security reforms, and privatization, is essential to encourage investment and employment. The Confederation stresses that real wage increases should be linked to the growth rate of each sector, that minimum wages should be differentiated by age in order to improve employment prospects for young people and, more generally, that flexibility should be introduced into the labour law. The Committee requests the Government to supply in its next report more detailed information on the measures taken or contemplated within the framework of the Seventh Five-Year Development Plan, particularly in regard to monetary and budgetary policies, investment policy, trade policy, prices, incomes and wages policies. It also requests the Government to describe the objectives of its employment policy in regard to the informal sector, the growth of which, according to the TISK, should be slowed down in order to promote employment opportunities in the modern sector. In this respect, the Government may find it useful to refer to the relevant provisions of Part V of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169).

3. The TÜRK-IŞ considers that the policies implemented by successive governments are contrary to the objectives of the Convention and have resulted in massive redundancies in the public and private sectors alike. The Committee notes that the Government states that it has been implementing a labour force adjustment project since 1994, with financial support from the World Bank, along with funds resulting from privatization. With reference to its previous comments, the Committee requests the Government to continue to supply detailed information on measures encouraging employment in the private sector of workers affected by privatization. The Committee also notes that the Government mentions active labour market policy measures designed to improve the skills of the labour force, provide training for the unemployed, and technical and financial support for small and medium-sized enterprises, as well as special employment projects for regions suffering high unemployment levels. The Committee hopes to find in the Government's next report detailed information on the nature and scope of these measures, as well as results obtained. It also requests the Government to indicate whether assistance is planned for young people who seem to have particular difficulty in finding employment.

4. *Article 3 of the Convention.* The Government states that the TÜRK-IŞ and the TISK participated actively in formulating the employment policies for the Seventh Five-Year Development Plan. It refers, furthermore, to the institution by a Decree of 6 May 1996 of a new Economic and Social Council with considerably more representation of various workers' and employers' organizations as well as other organizations concerned. The TISK, however, considers it of vital importance to give legal status to the Council to ensure its adequate operation. The Committee wishes to recall that the consultations required by this Article of the Convention should relate not only to the formulation of employment policies but also to their implementation, and that they should include, in addition to employers' and workers' representatives, representatives of other sectors concerned by the measures to be taken, such as the representatives of persons engaged in the rural and informal sectors. The Committee requests the Government to supply in its next report information on the consultations actually held on the subject of formulation and

application of the employment policy, specifying the opinions received and how they were taken into account. In addition, referring to its 1996 observation on the application of the Employment Service Convention, 1948 (No. 88), it hopes that the Government will soon be in a position to indicate that the advisory committees provided for by the Act of 1946 on the Employment Service are fully operational.

United Kingdom (ratification: 1966)

With reference to its observation of 1996, the Committee took note of the Government's report which provides additional information on the application of the Convention up to May 1997. The Government states that it is not yet in a position to provide a detailed response to the Committee's previous comments, but that its determination to give priority to job creation, employability and social cohesion has already been clearly established. A "New Deal" for the young and long-term unemployed has been announced and, during the autumn of 1997, the Government was to set out in detail its programme for employment, education and training.

In this context, and in order to contribute to the formulation and application of an employment policy which complies with the Convention, the Committee wishes to recall the main points raised in its previous observations. While noting the change in unemployment figures — of which the overall rate for the whole country has, according to the Government, again decreased from 7.6 per cent in June 1996 to 5.6 per cent in June 1997 — the Committee notes that the Trades Union Congress (TUC) made known its great concern at the continued deterioration in the quality of the jobs offered and in the advancement of precarious and poorly paid employment which does not enable workers to exercise fully their right to be represented by a trade union. The criticisms made by the trade union organization also related to the insufficient and ineffective nature of the active labour market policy measures and to the constraints placed on those receiving unemployment benefit to accept jobs which were not suitable for them. In addition, for many years the Committee has observed a worrying trend towards the elimination of tripartite dialogue on employment policies, as required under *Article 3 of the Convention*.

The Committee hopes that the Government's next report will contain complete and detailed information demonstrating that an active policy to promote full, productive and freely chosen employment, within the framework of a coordinated economic and social policy and in consultation with all the representatives of the persons affected, has been formulated and is being applied.

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In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Barbados, Bosnia and Herzegovina, Cambodia, Cameroon, Chile, Comoros, Cyprus, Djibouti, Ecuador, Greece, Guatemala, Guinea, Iceland, Iraq, Israel, Jamaica, Japan, Jordan, Kyrgyzstan, Lebanon, Libyan Arab Jamahiriya, Madagascar, Mauritania, Panama, Papua New Guinea, Paraguay, Philippines, Romania, Slovakia, Sudan, Tajikistan, Uganda, Ukraine, Yemen.*

Convention No. 123: Minimum Age (Underground Work), 1965

Zambia (ratification: 1967)

In its previous comments, the Committee has noted that, according to Regulation 2771(2) of the Mines Regulations of 1971, the rule laid down in Regulation 2117(1) prohibiting the employment underground of youth under the apparent age of 18 does not apply to young persons employed for purposes of apprenticeship or other systematic vocational training provided under adequate supervision by competent persons. Since 1975, the Committee has stressed the need to confine this exception to young persons of 16 years or older in conformity with ***Article 2 of the Convention***.

The Committee notes, once again, from the report of the Government that the amendment of the Mines Regulations of 1971 is being finalized. The Committee trusts that the draft text, referred to by the Government since 1978, will be adopted in the very near future.

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In addition, requests regarding certain points are being addressed directly to the following States: ***Australia, Bolivia, Cyprus, Ecuador, Hungary, Jordan, Madagascar, Mexico, Panama, Slovakia, Spain, Swaziland, Thailand, Tunisia, Turkey, Uganda, Zambia***.

Information supplied by ***India*** in answer to a direct request has been noted by the Committee.

Convention No. 125: Fishermen's Competency Certificates, 1966

Sierra Leone (ratification: 1967)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> In earlier comments the Committee noted that there exist no laws or regulations to give effect to the Convention. The Committee recalled the Government's earlier statement that the fishing industry is carried out mostly by vessels of less than 25 GRT not covered by the Convention and its indication that in so far as there may be larger vessels to which the Convention applies, efforts were being made to obtain information from the responsible authorities. The Committee also recalled that under section 57(n) of the Fisheries Management and Development Bill, the Minister would have the power to prescribe qualifications for manning of fishing vessels and thus to draft regulations to apply the Convention. The Committee notes the information provided by the Government in its latest report that it has formulated new regulations for the fishing industry which would incorporate the Committee's comments. The Committee hopes that the Government will provide information on the measures adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

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In addition, requests regarding certain points are being addressed directly to the following States: ***Brazil, Germany***.

Convention No. 126: Accommodation of Crews (Fishermen), 1966

Requests regarding certain points are being addressed directly to the following States: ***Djibouti, Sierra Leone***.

Convention No. 127: Maximum Weight, 1967

Chile (ratification: 1972)

The Committee notes that the Government's report has not been received. It must therefore repeat its its previous observation, which read as follows:

> *Article 3 of the Convention.* In its previous comments, the Committee noted that Circular No. 30 of 4 December 1985, from the Director of Labour to the regional directors of labour and the provincial and communal labour inspectors, lays down instructions on the maximum weight that may be transported manually by workers. This Circular gives effect to *Articles 3, 4 and 7, paragraph 2, of the Convention* by reducing the maximum weight of a load permitted to be transported manually to 55 kg, which is the weight recommended in Recommendation No. 128, and by specifying that the maximum weight that women and young workers are authorized to transport shall be substantially less than that permitted for men.
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> The Committee requested the Government to indicate:
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> - whether sections 57 and 252 of Presidential Decree No. 655 of 7 March 1941, issuing general regulations on occupational safety and health, which fix a maximum weight of 80 to 86 kg, have been repealed and, if so, by virtue of which provisions; and
> - whether the Circular has been published and distributed to employers, workers, the courts and all other persons concerned.
>
> *Article 6.* The Committee noted that section 8 of Circular No. 30 prescribes that mechanical devices shall be used for the transport of loads weighing over 55 kg. While this represents an improvement over the formal weight limit of 80 kg for the use of such devices to be required, the Committee points out that *Article 6 of the Convention* requires suitable technical devices to be used as much as possible, and not only for loads over the 55 kg weight limit. The Committee requested the Government to indicate the measures taken or envisaged in order to apply fully this provision of the Convention.
>
> *Article 7, paragraph 1.* The Committee noted that section 4 of Circular No. 30 does not provide that the assignment of women and young workers to the manual transport of loads other than light loads shall be limited. The Committee expressed the hope that the Government would take the necessary measures to ensure full compliance with this provision of the Convention.
>
> *Article 7, paragraph 2.* The Committee also noted that section 4 of Circular No. 30 prescribes that the maximum weight of loads for women and young workers shall be substantially less than that permitted for men, without specifying maximum limits. It requested the Government to indicate whether weight limits have been prescribed or are envisaged in this regard.

The Committee noted the Government's statement that its observations have been transmitted to a special commission which is examining the draft general regulations to be issued under the Labour Code. It notes the information supplied by the Government in its latest report to the effect that these draft regulations have not yet been adopted. Through its medical department, the social security administration has proposed that the maximum weight should be set at 50 kg, while the Chilean Safety Association, which is one of the mutual benefit societies of employers that administers social assistance in the field of employment injury, has proposed 55 kg. The Government considers that it would be appropriate to consult the Ministry of Health in this respect.

The Committee notes the Government does not provide other explanations concerning the provisions which are currently applicable.

The Committee trusts that measures will be taken in the very near future to clarify the situation in law and that the Government will provide full information on the measures which have been adopted in relation to the points raised in its previous comments, to which the Committee refers above in relation to the application of *Articles 3, 6 and 7, paragraphs 1 and 2, of the Convention.*

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Tunisia (ratification: 1970)

The Committee notes the Government's statement that its comments have been brought to the attention of the Standing Committee of the National Council for the Prevention of Occupational Risks and will shortly be examined by a committee made up of the various parties concerned including employers' and workers' organizations.

The Committee recalls that its previous observation read as follows:

> *Article 3 of the Convention*. In its 1994 observation on the Convention, the Committee noted that, pursuant to section 1 of the Order of 5 May 1988, the established maximum permissible weight to be carried by men, is set at 100 kg which considerably exceeds the recommended maximum of 55 kg. The Committee noted that regular manual transport of such loads is likely to jeopardize the health or safety of the workers, and requested the Government to re-examine the said provision in the light of the Convention and Recommendation No. 128. The Government, in its latest report, indicates that a commission will be established with the various parties concerned to examine the Committee's comments concerning the application of this Article of the Convention and that it will communicate to the Office the results of the commission's work in its next report. The Committee hopes that in this connection, account will be taken also of the information gathered by the medical services in non-agricultural enterprises and in ports in monitoring employees' health and physical aptitude — information requested by the Committee in its previous observation, but not communicated by the Government — as well as the possibilities created by the increasing mechanization of the transport of loads, referred to by the Government in its report, reducing the current limit of 100 kg maximum weight to be carried by one worker. The Committee hopes that the commission, referred to by the Government, will be able to conclude its work in the near future and that the Government will supply detailed information on the work of the commission and on the manner in which the most representative organizations of employers and workers have been or are being consulted on the matter, as well as on the measures taken or proposed to be taken to reduce the maximum permissible weight to be carried by one worker to a level that is not likely to jeopardize his health or safety.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to *Tunisia*.

Convention No. 128: Invalidity, Old-Age and Survivors' Benefits, 1967

Bolivia (ratification: 1977)

1. In its observation and direct request of 1996, the Committee raised a number of questions on the application of the Convention and took note of the comments sent by the National Confederation of Pensioners of Bolivia and the Bolivian Central of Workers. In their comments these organizations referred to a Bill on pensions. The Committee regrets to note that the Government has not sent a detailed report as the Committee asked in its previous observation.

2. The Committee notes the new comments sent on 27 November 1996 by the Bolivian Central of Workers and forwarded to the Government on 31 January 1997, recalling the consequences of the Bill on pensions for the application of the Convention.

Furthermore, the Committee notes the adoption, on 29 November 1996, of Act No. 1732 establishing a new pension scheme. In these circumstances, the Committee can but reiterate the hope that the Government will provide a detailed report including information and statistics on each Article of the Convention, in accordance with the report form, so that it can assess to what extent the new legislation gives effect to the Convention, in view of the comments on the questions raised by the above-mentioned workers' organizations.

Finland (ratification: 1976)

1. In its previous comments, the Committee expressed the hope that the ongoing reform of the pensions scheme will enable workers engaged in occupations that are arduous or unhealthy to receive old-age benefit before the age of 65 years, in accordance with *Article 15, paragraph 3, of the Convention*, despite the fact that public sector workers in such jobs are no longer entitled to old-age pension before 65 years of age. The Committee notes with interest, from the Government's reply, that flexible retirement before 65 years of age is now possible for public sector employees on the same terms as for private sector employees; thus, public sector employees in arduous or unhealthy occupations have the opportunity to take an early old-age pension at age 60 and to apply for a part-time or an individual early pension at age 58. An employee qualifies for individual early pension, which is equal in size to the disability pension, if he has a long history of work and if his capacity for doing his work has decreased taking into account the strain and wear of the job and the working conditions.

2. The Committee has also noted the observations presented by the Confederation of Unions of Academic Professionals (AKAVA) and the Central Organization of Finnish Trade Unions (SAK). As these organizations express concern over the impact of the changes adopted to the employment pensions scheme, in particular on the level of the benefits, the Committee would ask the Government to supply in its next report detailed information on the incidence of such changes on the application of the corresponding provisions of the Convention, as well as the statistical information required by the report form under *Article 26 of the Convention*.

Libyan Arab Jamahiriya (ratification: 1975)

The Committee notes that the Government's report has not been received for the second consecutive time. It recalls that the Government's previous report did not contain the information which has been requested on several occasions on the manner in which effect is given to *Part V, Article 29 of the Convention (review of cash benefits currently payable)*, which provides that the rates of cash benefits currently payable pursuant to *Article 10 (invalidity benefit), Article 17 (old-age benefit) and Article 23 (survivors' benefit)* shall be reviewed following substantial changes in the general level of earnings or substantial changes in the cost of living. In this respect, the Committee recalls its general observations made in 1989 with respect to Conventions Nos. 102 and 128, in which it considered that, given the effects of inflation on the general level of earnings and increases in the cost of living, revision of the level of long-term benefits should receive governments' particular attention in the current context of the general economic situation. The Committee therefore once again requests the Government to make every endeavour to ensure the application of Article 29 above and to supply the statistics called for under this Article of the Convention in the report form adopted by the Governing Body.

The Committee hopes that the Government's next report will also contain a detailed reply to the questions which it has been raising for many years and which it is recalling in a request addressed directly to the Government.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Barbados, Ecuador, Finland, Libyan Arab Jamahiriya, Sweden.*

Convention No. 129: Labour Inspection (Agriculture), 1969

Bolivia (ratification: 1977)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information contained in the Government's report to the effect that the preliminary draft of the new General Labour Act has incorporated the agricultural sector into the scope of its provisions through the abolition of the exception covering agricultural work contained in the current legislation. It also notes that measures will be adopted to establish a system of inspection covering all agricultural enterprises under the regulations that are to be issued under the Administrative Reform Act No. 1493 of 17 September 1993, known as the Executive Authority Ministries Act. With reference, *mutatis mutandis*, to its comments on the application of Convention No. 81, the Committee trusts that the Government will take the necessary measures in the near future to give full effect to the provisions of this Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to *Kenya*.

Convention No. 130: Medical Care and Sickness Benefits, 1969

Libyan Arab Jamahiriya (ratification: 1975)

With reference to the comments which it has been making for a number of years, the Committee notes with regret that the Government's report has not been received for the fourth consecutive time. It recalls that the previous information supplied by the Government contained only partial responses and did not include the statistics called for in the report form adopted by the Governing Body. As without this information it is impossible for the Committee to assess the extent to which effect is given to the provisions of the Convention, it once again raises the matter in a direct request in the hope that the Government will not fail to supply the information requested.

* * *

In addition, a request regarding certain points is being addressed directly to *Libyan Arab Jamahiriya*.

Convention No. 131: Minimum Wage Fixing, 1970

Bolivia (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation concerning the following points:

> In the previous comments, the Committee referred to the report of the Committee set up to examine the representation made by the Confederation of Private Employers of Bolivia under article 24 of the ILO Constitution (*Official Bulletin*, Vol. LXVIII, 1985, Series B, special supplement 1/1985). It noted the Government's reference to section 62 of Supreme Decree No. 21060 of 30 August 1985 which guarantees the fixing of wages through collective bargaining and pointed out that the free determination of wages by negotiation between employers and workers would not appear to constitute an adequate minimum wage-fixing system in the meaning of the Convention, in so far as it does not cover all the groups of wage-earners whose terms of employment are such that coverage would be appropriate.
>
> The Committee notes that the Government repeats its reference to Supreme Decree No. 21060, and states in reply to the previous comments that Supreme Decree No. 19462 of 15 March 1983 was repealed in virtue of section 170 of Supreme Decree No. 21060 and that the National Wages Council was not consulted, since Supreme Decree No. 11706 of 16 August 1974, which set up this Council, was also of transitional nature. The Committee also notes Decree No. 23093 of 16 March 1992, section 2 of which fixes a new rate of the national minimum wage applicable to both public and private sectors.
>
> The Committee recalls that the conclusion of the Committee set up to examine the above-mentioned representation, which was adopted by the Governing Body, was that measures should be taken by the Government to ensure consultation with both employers' and workers' organizations in connection with the establishment, operation and modification of the minimum wage-fixing machinery (*Article 4, paragraph 2, of the Convention*), as well as the participation of these organizations in the operation of such machinery (*Article 4, paragraph 3*). The Committee requests the Government to communicate information on any measures taken or envisaged for such consultation and participation.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Brazil (ratification: 1971)

In previous comments, the Committee noted the observations made by the National Union of Labour Inspectors (SNAIT) concerning the fact that the Government does not comply with the obligation set out in *Article 4, paragraph 2, of the Convention* to consult the representative organizations of employers and workers on the adjustment of the minimum wage. It recalled that this provision of the Convention requires *full* consultation with representative organizations of employers and workers concerned or, where no such organizations exist, their representatives, in connection with the establishment, operation and modification of machinery whereby minimum wages can be fixed and adjusted. In this respect, the Committee also recalls the indications contained in paragraph 234 of its General Survey of 1992 on minimum wages, according to which, although States are free to choose the means whereby consultation is carried out, the consultation must take place prior to decisions are made and must be effective, that is to say that it must "enable employers' and workers' organizations to have a useful say" in the matters that are the subject of consultation, in this case the adjustment of minimum wages. The Committee also recalled that the obligation to consult is distinct from negotiation. It requested the Government to indicate the measures which have been taken or are envisaged to ensure prior and effective consultation of the organizations of employers and workers concerned in decisions relating to minimum wages in accordance with *Article 4, paragraph 2, of the Convention*.

In its report, the Government states that representative organizations of workers and employers are consulted and heard constantly, on the understanding that it is the responsibility of the executive authority to fix the index after analysis of the impact on the public exchequer because of the consequences regarding unemployment benefits and allowances for needy and disabled persons. The Government also states that in fixing the amount of the minimum wage it takes into consideration economic aspects and consults employers and workers' organizations.

The Committee notes this statement. Nevertheless, it observes that the Government's report contains no particulars regarding the procedures of this consultation and, particularly, whether the employers' and workers' organizations concerned were consulted prior to the readjustment of the minimum wage announced in Provisional Resolution No. 1572 of 29 April 1997 and No. 1572-2 of 27 June 1997. It therefore requests the Government to indicate the consultations which were conducted prior to fixing of the minimum wage by the Provisional Resolutions, specifying the organizations of employers and workers which were consulted and the outcome of the consultations. It also requests the Government to indicate the measures taken or contemplated to ensure prior and effective consultation of the organizations of employers and workers concerned in decisions relating to minimum wages in accordance with *Article 4, paragraph 2*.

[The Government is asked to report in detail in 1998.]

Costa Rica (ratification: 1979)

In its previous comments, the Committee examined the observations made by the Confederation of Workers Rerum Novarum (CTRN) relating to wage rates for road transport workers which, when calculated on an hourly basis, are excessively low (below the legal minimum rates), considering the excessive number of hours worked. The Committee noted that at the instance of the Ministry of Labour and following consultation with employers and workers, the Government submitted to the Legislative Assembly a Bill to amend section 146 of the Labour Code providing for the establishment of special provisions in respect of the number of working hours for certain types of work.

Noting that the Government's report does not contain any information on this matter, the Committee hopes that the amendment in question will enable the hourly rates for the minimum wages of road transport workers to be respected and that the Government will provide a copy of the text as soon as it has been adopted.

Ecuador (ratification: 1970)

In its previous comments, the Committee noted the information supplied by the Ecuadorean Confederation of Free Trade Unions (CEOSL) concerning the application of *Article 2, paragraph 2, of the Convention*. The CEOSL considers that the amendment of section 168 of the Labour Code, introduced by section 29 of Act No. 133 to revise the Labour Code, creates a new category of workers, "industrial apprentices", whose pay may not be less than 75 per cent of the minimum subsistence wage for a period of not more than six months.

In reply to the CEOSL observations, the Government indicated that before the amendment of section 168 of the Labour Code the labour legislation did not provide for any wages to be paid to apprentices and that the purpose of the new provision was to ensure to the apprentice the payment of remuneration which may not be less than 75 per cent of the minimum subsistence wage but which may also be higher. In addition, Act No. 133 makes it compulsory, in apprenticeship contracts, for a written contract to be drawn up in the presence of the labour inspector, who will register it: 592 apprenticeship contracts, most of them in small-scale industries, were registered in 1992.

While noting this information, the Committee recalled that a wage lower than the minimum wage may be allowed for apprentices provided that in exchange they actually receive training during working hours and at the place of work which enables them to acquire skills in a trade or occupation. It asked the Government to indicate the measures taken or under consideration to ensure that persons holding an apprenticeship contract may be paid a wage lower than the minimum subsistence wage only if, in return, they receive effective training.

In its report, received late, the Government states that measures in this direction are in process of adoption. The Committee trusts that the Government will not fail to indicate in the near future the measures adopted to ensure that payment of a wage lower than the minimum subsistence wage for holders of an apprenticeship contract may be applied only in return for effective training.

Latvia (ratification: 1993)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation concerning the following points:

> The Committee notes the information supplied in the first report of the Government and the observations made by the Free Trade Union Federation of Latvia (LBAS).
>
> The Committee notes from the observations made by the LBAS that, according to trade union experts, the state-determined minimum wage is 1.7 times less than the state-determined crisis living wage and three times less than the living wage necessary for one working person.
>
> The Committee notes that the Government has not communicated its comments on these observations and requests it to do so. It asks the Government to provide comprehensive information on the results of the application of the minimum wage fixing machinery in accordance with *Article 5 of the Convention*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Netherlands (ratification: 1973)

In its previous comments, the Committee noted the introduction of a new system — the "i/a" ratio — to adjust the minimum wage. This is based on the ratio of people receiving social benefit ("i") and wage-earners ("a"). This ratio was at that time evaluated at 86 per cent and, according to the Government, the automatic adjustment of the minimum wage can be cancelled if this percentage is exceeded. The Committee requested the Government to indicate whether the employers' and workers' organizations were consulted in introducing the i/a ratio, and to supply any legislative or others texts that provide for the use of the i/a ratio in determining the application of section 14(5) of the Minimum Wage and Minimum Leave Allowance Act No. 657, of 1968, as amended by Act No. 624 of 1991 (possibility for the Government of not executing the automatic adjustment of minimum wage).

In its report, the Government states that the i/a ratio is part of the explanatory memorandum contained in Act No. 624 of 1991. Before the Act was introduced, the Social Economic Council (SER) was asked for advice about the new minimum wage system. According to the Government, the SER, consisting of representatives of the trade unions, employers and independent experts, has never approved the i/a ratio as the only norm of the minimum wage determination. In their opinion, other elements, like wage growth, development in unemployment, labour productivity growth, etc., should be taken into account.

In addition, the Government states that, during the years 1993 to 1995, minimum wages were frozen in nominal terms. The freeze in 1993 and 1994 were unanimously approved by the SER because of the rapid worsening of the economy, while the minimum wage freeze of 1995 was supported only by the employers' representatives and a majority of the independent members. The trade unions were against this freeze as, in their opinion, both wage growth and development in unemployment were better than in previous years. However, as the i/a ratio was expected to exceed 82.6 per cent in 1995, the Government could cancel the linkage, and made use of this possibility. In 1996 (and also 1997) minimum wages and social benefits were linked to the average wage growth.

As regards the appeal lodged by the Christian Trade Union (CNV) on the minimum wage freeze of 1995, the Committee notes that, in a judgement dated 22 June 1995, the court decided in favour of the Government by confirming, inter alia, that the i/a ratio is indeed the decisive norm although it is not laid down in Act No. 624 of 1991.

The Committee refers to paragraph 282 of its General Survey of 1992 on minimum wages which indicates that the "minimum wage-fixing criteria specified in [the Convention] do not represent precise models; nor do they pretend to give final and unequivocal answers to questions on how suitable minimum wage levels should be determined in a given situation to contribute as effectively as possible to the general welfare". The Committee recalls that the fundamental and ultimate objective of the Convention is to ensure to workers a minimum wage that will provide a satisfactory standard of living.

The Committee requests the Government to continue to provide general information on the manner in which the Convention is applied in the country, in accordance with *point V of the report form*.

Spain (ratification: 1971)

The Committee notes the detailed information supplied by the Government in its report.

Periodic adjustment of minimum wages

In its previous comments relating to the observations submitted by the General Union of Workers (UGT), the Committee requested the Government to indicate the procedure followed, under section 27(1) of the Workers' Statute which provides for the half-yearly revision of the interoccupational minimum wage (SMI) in the event that the price index forecasts prove inaccurate, in order to verify the correctness of the forecast and to determine whether the SMI should be revised, and to indicate whether the employers' and workers' organizations are consulted in this regard.

The Government indicates that during the reference period there have been no half-yearly revisions of the SMI in application of section 27(1) of the consolidated Workers' Statute. The Government recalls, however, that following the amendment of the regulations on the legal wages system by Royal Decree No. 170/1990 of 9 February 1990, loss of purchasing power is considered as a factor to be taken into account in revising wages when inflation proves to be higher than forecast and adopted for determining the minimum wage. Possible differences between the rate of inflation forecast and the actual rate may be known at the moment of determining the amount of minimum wage which will be in force the following year, by applying this minimum wage correction factor, namely the loss of purchasing power, in accordance with the revision clause provided in collective labour agreements or those applicable to civil servants and retirees.

The Committee notes these indications and requests the Government to indicate whether employers' and workers' organizations were consulted before the provisions relating to half-yearly re-examination of the SMI were used.

Application of the principle of equal remuneration for work of equal value for young workers receiving interoccupational minimum wage

In previous comments, the Committee noted the Government's statement to the effect that since 1990 the SMI has been fixed for workers of 18 years and over and for those under 18, while previously a distinction was made between workers up to 16 years old, those 17 years old and those 18 and over. It also noted point 10 of part II (Legal grounds), of the constitutional court decision dated 7 March 1984 (BOE of 3 April 1984) in which it was confirmed that the principle of equal wages for the same work or work of equal value applies to workers of all ages. The Committee requested the Government to indicate the measures taken or contemplated to ensure that workers under 18 years old can, as stated in the report, receive wages equal to those of older workers for the same work or work of equal value.

The Committee notes with satisfaction the indication supplied by the Government in its report that, in addition to abolishing the wage differential for 16-year old workers, Royal Decree No. 2199/95 fixing the interoccupational minimum wage for 1996 initiates a process of closing the gap in minimum wages for adults and workers younger than 18 years of age, with the aim of aligning them definitively within three years. Hence, for 1996, the wage for young workers amounted to 77.4 per cent of that for adult workers whereas the percentage in 1995 was only 66.1 per cent. Similarly, Royal Decree No. 2656/96 fixing the interoccupational minimum wage for 1997, increases the minimum salary for minors under 18 years old by 17.73 per cent, as in the previous year, while the wage for adults over 18 years old increases by only 2.6 per cent.

The Committee requests the Government to continue to supply information on the convergence of interoccupational minimum wages for adult workers and minors.

Minimum wages for apprentices

In previous comments, the Committee, referring to the UGT's comments noted that the Workers' Statute provides in section 11(2) for the possibility of an apprenticeship contract for workers over 16 and under 25 years old and that the maximum age-limit does not apply to disabled workers. At that time, the Committee requested the Government to supply information on the application in practice of these provisions, particularly in regard to measures taken or envisaged to prevent the abatement of the minimum wage.

The Government indicates in its report that there have been various changes in the minimum wage for workers under a contract of training. A new section 11(2), which amends the old section 11(2) of the Consolidated Act on Workers' Status, replaces the training contract by an apprenticeship contract, and gives it a meaning that has a particular legal status. By this meaning, the purpose of the apprenticeship contract is to enable the apprentice to acquire the theoretical and practical training needed for performing a job or occupying a post of skilled work. It may be concluded with workers aged over 16 and under 25 years who do not possess the qualifications required for concluding a traineeship contract. The maximum age-limit does not apply to disabled workers. The theoretical training periods must alternate with practical work, comply with the provisions of the relevant collective agreement or, failing this, the labour contract, provided that the total time devoted to training is not less than 15 per cent of the maximum working day provided in the collective agreement. The theoretical part of the training is deemed to be complete when the apprentice confirms by means of a certificate issued by the competent public authorities that an occupational training course has been followed appropriate for the office or post in which the apprenticeship is undertaken. In this case, the worker's remuneration will increase in proportion to the work time not devoted to training. Enterprises which do not comply with their theory training obligations must compensate the worker by paying a sum equal to the difference between the wage received (bearing in mind the training time provided in the contract), and the interoccupational minimum wage or that provided under the collective agreement, without prejudice to the sanction incurred. The apprentice's remuneration is fixed by the collective agreement but, where there is no agreement, it may not be less than 70, 80 or 90 per cent of the interoccupational minimum wage during the first, second and third years of the contract respectively. In addition, the remuneration of apprentices aged under 18 years may not be lower than 85 per cent of the interoccupational minimum wage corresponding to his age.

According to the Government, the reduction in the interoccupational minimum wage corresponds to the occupational training which the worker receives in the enterprise.

The Committee notes these indications with interest. It requests the Government to continue to supply information on the impact of applying these measures to apprentices' minimum wages.

Sri Lanka (ratification: 1975)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation concerning the following points:

> In its earlier comments, the Committee noted the observations made by the United Plantation Workers' Union, the Democratic Workers' Congress, the Landa Jathika Estate Workers' Union and the Ceylon Workers' Congress concerning the application of *Article 4 of the Convention* in the plantations sector (in particular in the tea-growing and manufacturing trade, rubber-growing and manufacturing trade and coconut growing and manufacturing trade). It noted the Government's indication of the necessity for an elaborate analysis of wage structure in the plantations sector, and hoped that, following the analysis, the minimum wage fixing machinery would be maintained and implemented in the plantations sector.
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> The Committee notes the Government's indication in the report that the wages of the workers in the plantation sector are determined by the Wages Board, after consultation with the employers' and workers' organizations, on the basis of the basic minimum wages with added allowance based on the cost of living index.
>
> The Committee requests the Government to indicate whether the above-mentioned analysis of the wage structure in the plantations sector has actually been undertaken and, if so, whether the results have been taken into consideration in the minimum wage fixing. It also requests the Government to communicate a copy of the Wages Board decisions fixing the minimum wages in the plantation sector.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Uruguay (ratification: 1977)

The Committee notes the information supplied by the Government in its report as well as the observations submitted by the Inter-Union Assembly of Workers — National Convention of Workers (PIT-CNT).

Consideration of the needs of workers and their families in determining minimum wages

In its previous comments, the Committee requested the Government to provide information on the working, in practice, of the wage councils established under Act No. 10449 and on the minimum wages fixed by sector of activity and category of workers. The Committee also requested the Government to indicate the measures taken so that elements such as the needs of workers and their families *(Article 3 of the Convention)* are taken into consideration in determining the level of minimum wages.

The Government states that the policy of determining wages has changed since the Committee made its previous comments, following changes to the country's economic policy which is focused on controlling inflation. It has been noted that the system of determining wages by the wage councils, with participation of the State, had a direct impact on inflation, since inflation was already indexed in the four-month period preceding the determining of minimum wages. The economic policy must also take into account the undertakings made vis-à-vis the Southern Cone Common Market (MERCOSUR)

In its observations, the PIT-CNT considers that the national minimum wage is very inadequate and recalls that it is currently 840 Uruguayan pesos, the equivalent of US$86.35 per month. Furthermore, the minimum wage is used in calculating a series of social benefits (including family allowances and retirement pensions), and for that reason the Government maintains it at extremely low levels. Moreover, according to the PIT-CNT, there are no technical grounds for asserting that the working of the wage councils is really the main source of inflation. The organization stresses that there are no agreements within MERCOSUR for determining joint wage policies or harmonizing such policies; this is simply a pretext put forward by the Government for the purpose of implementing a wage policy geared to reducing wages.

The Committee notes these statements and observations. It refers to paragraph 281 of the 1992 General Survey on minimum wages in which it recalls that the minimum wage must be sufficient for the subsistence needs of workers and their families and that such needs are both a criterion of minimum wage fixing and an objective of the Convention. It notes that, in its statements on the fixing of minimum wages, the Government refers only to macroeconomic criteria. It asks the Government to indicate to what extent and by what methods the needs of workers and their families are taken into consideration in determining minimum wage levels, in accordance with *Article 3 of the Convention*.

Lack of consultation of the employers' and workers' representatives concerned in the determination of minimum wages

In its previous comments, the Committee asked the Government to indicate the measures taken for consulting the representatives of the employers and workers concerned in determining the national minimum wage and the minimum wage of rural workers, in accordance with *Article 4, paragraph 2, of the Convention*.

In response to these comments, the Government indicates that, following the change in economic policy for the reasons given earlier (inflation control, commitments under

MERCOSUR), minimum wages for the rural sector and domestic service are still fixed by the Executive. For sectors such as public transport, health and construction, minimum wages are fixed through tripartite negotiations; however, in the first two sectors where charging rates exist, the State intervenes to prevent the phenomenon of the indexation of inflation to wages and its repercussion on the cost of these services. As for the other sectors of activity, minimum wages are determined through branch or enterprise collective agreements, negotiated directly between the employers' and workers' organizations concerned.

In its observations, the PIT-CNT considers that the national minimum wage continues to be fixed exclusively by the Executive, and that the social partners (employers and workers) have no opportunity of participating in the minimum wage fixing. This is in flagrant breach of the Convention which lays down the obligation to consult the representative organizations of employers and workers in connection with the establishment, operation and modification of machinery for minimum wage-fixing. The minimum wages of rural workers and domestic workers also continue to be fixed exclusively by the Executive. Lastly, with the increase in the number of workers who have no real opportunity to negotiate, collective bargaining is losing ground and a large proportion of wages are still fixed unilaterally by the employer. As a result, the remuneration of these workers is being reduced and is approaching the national minimum wage.

The Committee notes the above information. It notes the overall persistence, over many years, of the problem of unilateral determination by the Government of the interoccupational minimum wage and the minimum wages of rural and domestic workers without any consultation with the representatives of the employers and workers concerned. It recalls that, in paragraph 186 of its 1992 General Survey on minimum wages, it stressed that one of the essential obligations of the minimum wage instruments is that the minimum wage fixing machinery must be set up and operated in consultation with organizations of employers and workers who must participate on an equal footing.

The Committee hopes that the Government will be able to indicate the measures taken to ensure full consultation with the representative organizations of employers and workers concerned in fixing the national minimum wage and the minimum wages of rural and domestic workers, in accordance with the provisions of *Article 4, paragraph 2, of the Convention*.

[The Government is asked to report in detail in 1998.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Australia, Bolivia, Brazil, Costa Rica, Ecuador, El Salvador, Latvia, Libyan Arab Jamahiriya, Lithuania, Nepal, Niger, Sri Lanka, United Republic of Tanzania, Uruguay, Yemen*.

Convention No. 132: Holidays with Pay (Revised), 1970

A request regarding certain points is being addressed directly to *Yemen*.

Convention No. 133: Accommodation of Crews (Supplementary Provisions), 1970

Netherlands (ratification: 1985)

Article 11, paragraph 5, of the Convention. The Committee notes with satisfaction Policy Regulation No. S1997/1 on lighting of crew quarters adopted under section 53(1) of the Crew Decree which sets standards for the minimum lighting intensity for different types of lighting, thus bringing the legislation into conformity with *Article 11, paragraph 5, of the Convention.*

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Côte d'Ivoire, Italy.*

Convention No. 134: Prevention of Accidents (Seafarers), 1970

A request regarding certain points is being addressed directly to the *United Republic of Tanzania.*

Convention No. 135: Workers' Representatives, 1971

Costa Rica (ratification: 1977)

The Committee notes the Government's report and the comments made by the Inter Confederal Committee of Costa Rica (CICC) on the application of the Convention. The Committee observes that the comments have been forwarded to the Government to enable it to send its observations in this respect.

The Committee notes that the CICC states that no procedure exists prior to the dismissal of a trade union leader in which the grounds for dismissal are established. Similarly, the CICC criticizes the lack of any kind of enforcement in court rulings ordering the reinstatement of trade union leaders. The Committee underlines that the Convention permits different types of protection for workers' representatives from acts that could be prejudicial to them, including dismissals, as long as there is effective and rapid protection, which would be provided for prior to or following a dismissal. In any event, the Committee must insist on the need to comply with judicial decisions that order the reinstatement of workers' representatives in their posts and requests the Government to take measures in this respect. As regards the excessive delays alleged by the CICC in proceedings concerned with acts of anti-union discrimination, the Committee requests the Government to take measures to ensure that proceedings are carried out expeditiously and to keep it informed in this respect.

Furthermore, the Committee notes that the CICC states that the Government is violating the provisions of *Articles 2 and 5 of the Convention* concerning facilities for workers' representatives and the requirement for elected representatives not to undermine the position of trade union representatives. In this respect, the Committee requests the Government to provide, in its next report, observations in relation to the comments made by the CICC on this matter.

Côte d'Ivoire (ratification: 1973)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the report of the direct contacts mission, and the conclusions of the Committee on Freedom of Association concerning Case No. 1594 (296th Report of the Committee approved by the Governing Body at its 261st Session, November 1994).
>
> *Article 1 of the Convention.* (...) The Committee notes the content of Act No. 92-573 of 11 September 1992 concerning dismissal for economic reasons, section 5 of which, subject to the provisions of section 64(2) of the Labour Code, renders null and void any collective agreement establishing a procedure for the dismissal of more than one worker for economic reasons which is not consistent with the procedure established by the Act and Circular 07585/EFP/CAB of 20 July 1993 signed by the Minister of Employment and the Public Service and addressed to the President of the Employers' Union of Côte d'Ivoire. The Circular states in particular: "In substance, this Act abolishes the authorization of the inspector of labour and labour law in the event of dismissal for economic reasons and *transfers the responsibility for the operation to the head of the enterprise* who shall inform the staff in the presence of the labour inspector." In the Circular, the Minister concludes that the new Act on economic dismissal has now been promulgated and the procedure laid down in it is the one to be observed without any further formalities by the signatories of the interoccupational collective agreement.
>
> The Committee notes the concern about the Act and Circular expressed by the representatives of both the General Union of Workers of Côte d'Ivoire (UGTCI) and the Federation of Free Trade Unions of Côte d'Ivoire (Dignité) during the direct contacts mission. According to these organizations, these texts make it possible to nullify the effects of Article 38 of the collective agreement of 1977 on the protection of trade union representatives. The Committee recalls the importance it attaches to observance of Article 1 of the present Convention. It also recalls the content of Article 6, paragraph 2(f), of the Workers' Representatives Recommendation, 1971 (No. 143), which recommends recognition of a priority to be given to workers' representatives with regard to the retention in employment in case of reduction of the workforce.
>
> The Committee asks the Government to indicate in its next report any measures taken or envisaged to ensure observance in this respect of Article 1 of the Convention both in law and in practice.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Iraq (ratification: 1972)

The Committee notes with regret that the Government's report still does not reply to the previous direct requests for more detailed information on the application of *Article 2 of the Convention*, and in particular that it does not contain copies of any agreements concluded between the workers' and the employers' organizations to which the Government had referred in its previous report and which would provide members of trade union committees with the facilities necessary for carrying out trade union functions.

In these circumstances, the Committee is bound once again to draw the Government's attention to the terms of *Article 2*, under which facilities must be afforded in the enterprise to workers' representatives (such as the necessary time off to attend meetings, training courses and trade union seminars, conferences and congresses; access to workplaces when necessary; space to post trade union notices, etc., as indicated in Chapter IV of the Workers' Representatives Recommendation, 1971 (No. 143)).

The Committee is bound to request the Government once again to provide with its next report the texts of any agreements concluded between trade unions and employers which afford the above facilities to workers' representatives in enterprises, as well as any other relevant information on the practical application of *Article 2*.

Jordan (ratification: 1979)

The Committee notes the information supplied by the Government in its report as well as the adoption of the Labour Code of 1996.

With reference to the comments it has been making for many years on the need to adopt measures to ensure the application of *Article 2 of the Convention*, the Committee notes that except for 14 days of paid leave for courses, the new legislation contains no provisions to afford facilities in the undertaking to workers' representatives in order to enable them to carry out their functions promptly and efficiently. The Workers' Representative Recommendation, 1971 (No. 143) gives examples of such facilities: time off for attending trade union meetings, congresses, etc.; access to all workplaces in the undertaking if necessary; access to the management of the undertaking whenever necessary; permission to distribute written documents and publications of the union to the workers; material facilities and information for the exercise of their functions, etc.

The Committee requests the Government to take steps to give full application to the Convention in particular through legislative provisions or regulations or collective agreements. It asks the Government to indicate in its next report the measures taken in this respect and to provide copies of any collective agreements containing provisions which grant facilities to workers' representatives in order to carry out their functions.

Rwanda (ratification: 1988)

The Committee notes the Government's report.

Article 4 of the Convention. The Committee pointed out that, by virtue of section 160 of the Labour Code, the Minister of Labour shall, by an order made on the advice of the Labour Advisory Board, prescribe, inter alia, the minimum number of workers above which, and the category of establishments in which, the election of staff representatives shall be compulsory; the number of representatives and their distribution among the various occupations; the election procedure; and the conditions to be fulfilled by electors and candidates for election. The Committee notes that, according to the Government's report, no implementing measures have been taken on the basis of the section in question and that, with the revision of the Labour Code, the Government wished to review the situation in order to remedy the shortcomings and, as a priority, the election procedures for staff representatives. The Committee notes that the most recent draft of the Code, of which a copy was supplied by the Government, provides, in particular, that the minimum number of electors, conditions for eligibility, and number of representatives must be fixed by ministerial order. The Committee requests the Government to supply any new information on the matter, particularly the definitive text of the Labour Code as soon as it has been adopted, and any ministerial order concerning the application of provisions relating to staff representatives.

Sri Lanka (ratification: 1976)

The Committee notes the information provided by the Government in its report.

1. In its previous comments, the Committee had considered that the wide-ranging restrictions contained in several recently issued Emergency Regulations impaired the

day-to-day functioning of workers' representatives in the undertaking, contrary to *Article 2 of the Convention*. The Committee had therefore requested the Government to lift the restrictions which affected the functioning of and facilities available to workers' representatives. The Government states that the political situation of the country is reviewed once a month and that Parliament extends the state of emergency depending on the report submitted by the Ministry of Defence. Although the state of emergency is currently still in force, restrictions on trade union activities have been eased as a result of which strikes and other trade union activities are common occurrences today. The Committee takes note of this information.

2. The Committee recalls that it had previously drawn the Government's attention to the importance of effective protection of workers' representatives against any act prejudicial to them — including dismissal — based on their status or activities as workers' representatives and to the need to adopt measures in this regard beyond the approval and appeals procedures provided for in the Termination of Employment of Workmen (Special Provisions) Act, 1971, and the Industrial Disputes Act, 1967. In its report, the Government indicates that the necessary amendments to the Industrial Disputes Act have been drafted in this respect. These amendments are being considered by a Cabinet subcommittee and, once approved, will be presented to Parliament. The Committee trusts that these amendments to the Industrial Disputes Act will ensure the protection of workers' representatives in accordance with *Article 1 of the Convention*. It requests the Government to supply a copy of these amendments as soon as they are adopted.

United Republic of Tanzania (ratification: 1983)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> With reference to its previous comments on the lack of any protection or facilities for workers' representatives in the undertaking in the Organization of Tanzanian Trade Unions (OTTU) Act No. 6 of 1991, the Committee notes the Government's statement that the Security of Employment Act 1964 (section 8(b)) provides that an employer shall not discriminate against (a workers' representative) on the ground of such representative's membership of the (workers') committee and "... shall not terminate the employment of a member of the committee ... without the prior approval of a labour officer". Moreover, the Committee notes with interest that section 8 provides for duties of employers in respect of affording workers' representatives such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently.
>
> As regards section 4 of the OTTU Act, which establishes OTTU as the sole trade union body representative of all employees in the United Republic, the Government had stated in its previous observation that this provision would be reviewed once the ongoing elections from branch level to national level were completed and that the OTTU was only a caretaker body for the transition towards establishing a freely elected and constituted body of workers. The Government now indicates in its report that so far elections have taken place in respect of the Teachers' Union, which has been given full registration, and that it hopes for the same in other crafts/professions.
>
> The Committee trusts that section 4 of the OTTU Act will be reviewed once the ongoing elections from branch level to national level are completed. It requests the Government to keep it informed of any developments in this respect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Australia, Austria, Lithuania, Netherlands, Portugal, Turkey, Yemen.***

Information supplied by *Croatia,* in answer to a direct request has been noted by the Committee.

Convention No. 136: Benzene, 1971

Guyana (ratification: 1983)

1. In comments that it has been making since 1987, the Committee noted that national laws and regulations were too general to give full effect to the provisions of the Convention and that specific measures should therefore be taken to regulate the use of benzene and products containing benzene in accordance with the Convention. The Committee notes the Government's information in its report that a final draft Occupational Safety and Health Act has been prepared by officers at the Attorney-General's chamber for submission to Parliament. The Committee hopes that the Government will soon be in a position to report on progress made towards the adoption of specific measures required under the Convention to protect workers against hazards of poisoning arising from benzene.

2. The Committee raises certain points in a request addressed directly to the Government.

* * *

In addition, requests regarding certain points is being addressed directly to the following States: *Guyana, India.*

Convention No. 137: Dock Work, 1973

Brazil (ratification: 1994)

Committee notes the Government's first two reports received in September 1996 and August 1997, and the information appended. It also notes the observations made by the following organizations: ***Federação nacional dos portuários, Sindicato de estivadores de Santos, São Vicente, Guarujá e Cutatão, Sindicato dos estivadores de São Sebastião, Sindicato dos arrumadores de São Sebastião, Intersindical dos sindicatos dos trabalhadores avulsos da orla portuária de Itajaí, Navigantes, Florianópolise região de Santa Catarina, Federação nacional dos estivadores, and Federação nacional dos conferentes e consertadores de carga e descarga, vigias portuários e trabalhadores de bloco e arrumadores,*** as well as the Government's replies.

In view of the large amount of materials to be scrutinized, the Committee will duly examine these matters at its next session in 1998.

France (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> 1. The Committee notes the information supplied by the Government and the comments of the National Association of Dock Work Industries in French Ports (UNIM). It notes in particular the adoption of Act No. 92-496 of 9 June 1992 amending Act No. 47-1746 of 6 September 1947 on the organization of dock work in sea ports, and the conclusion of the

national collective agreement on dock work in 1993-94. As a result of the above reforms, most professional dockworkers who used to do casual work are now employed under a monthly scheme by cargo-handling companies on the basis of an indefinite contract. The Government also indicates that some professional dockworkers are still employed on a casual basis but that this scheme will gradually disappear since no new registration cards are being issued.

2. The UNIM considers that the Convention is obsolete in view of technological developments in the port industry and the reforms in the organization of work in the port sector. It draws attention in particular to the provisions of the French legislation which restrict both the choice by cargo-handling companies of the staff they employ and the procedure for economic terminations.

3. The Committee refers to the tripartite meeting on social and labour problems caused by structural adjustment in the port industry held in Geneva in 1996 and recalls that one of the meeting's conclusions was that the ILO must continue to promote the ratification and application of the relevant international labour standards. The Committee would be grateful if the Government would continue to provide information on the application of the provisions of the Convention, in the light of the results of the above meeting, and the comments made by the UNIM.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Spain (ratification: 1975)

The Committee notes with interest the Government's report and the detailed information supplied in response to its previous observation.

Article 2, paragraph 2, of the Convention. Further to its previous comments in which it asked the Government to indicate whether workers on the Special Register of Dock Workers are entitled to minimum periods of employment or minimum income, "in a manner and to an extent depending on the economic and social situation of the country and port concerned", the Committee notes that article 9, paragraph 3, of the Agreement on the regulation of labour relations in the port sector of 18 October 1994 provides for a minimum income to be set in regional collective agreements.

The Committee also notes the information to the effect that dockers recruited for casual work by stevedoring companies are subject to the conditions of employment provided for in the Statute of workers which apply to all sectors of activity.

Article 6. The Committee notes that article 11 of the above-mentioned Agreement of 18 October 1994 provides that the National Agreement on Continuous Training of 16 December 1992 applies. It also notes that article 12 provides for the establishment of a joint committee on safety and health. The Committee notes the information concerning the establishment of a tripartite committee for training and the application to dockers of the Act of 8 November 1995 on the prevention of risks at work, and asks the Government to indicate the practical effect given to the provisions of above-mentioned articles 11 and 12.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Sweden, United Republic of Tanzania.*

Information supplied by *Guyana* in answer to a direct request has been noted by the Committee.

Convention No. 138: Minimum Age, 1973

Azerbaijan (ratification: 1992)

The Committee recalls that the minimum age of 16 years was specified under *Article 2, paragraph 1, of the Convention* as regards Azerbaijan. It notes that while section 193 of the Labour Code (10 December 1971 with subsequent amendment) prohibits the employment of persons under the age of 16, the Individual Contracts of Employment Agreements Act, which entered into force on 21 May 1996, sets the minimum age for concluding an employment contract at 14 years. The Committee further notes the indication made by the Government in June 1997 at the United Nations Committee on the Rights of the Child that children could sign a contract of employment from the age of 16 and are authorized to do so from the age of 14 with the agreement of their parents or guardian (CRC/C/SR. 391, paragraph 22). The Committee points out that the Convention allows and encourages the raising of the minimum age but does not permit lowering of the minimum age once specified. It also recalls that *Article 7 of the Convention* allows, as an exception, the employment or work of persons 13 to 15 years of age only on light work which is not likely to be harmful to their health or development and not such as to prejudice their attendance at school. Other than such light work, work done by under-age children should be prohibited even if the parent gives consent. Therefore, the Committee asks the Government to indicate the measures taken or envisaged, pursuant to its declaration under *Article 2*, to ensure that access to employment of children of 14 and 15 years of age may be allowed, exceptionally, only for work meeting the criteria set out in *Article 7*.

Belarus (ratification: 1979)

The Committee has noted the detailed information supplied by the Government in reply to its general observation of 1995. It notes in particular the Government's efforts to reinforce vocational training and guidance, and to support families in difficulties in the context of political and economic reforms. The Committee requests the Government to continue to supply information on various social measures taken in so far as they have bearing on the application of the Convention.

The Committee also notes the Government's intention to expand compulsory education to raise the age of completion of compulsory education up to the minimum age for employment (16 years). It recalls that the requirement of *Article 2(3) of the Convention* is fulfilled since the minimum age for employment is not less than the age of completion of compulsory education. The Committee, however, considers it desirable to ensure compulsory education up to the minimum age for employment, as provided under *Paragraph 4 of Recommendation No. 146*, so as not to leave a period of forced idleness between the two ages. It hopes, therefore, that the Government will indicate any development in this regard.

Costa Rica (ratification: 1976)

The Committee recalls that the minimum age of 15 years was specified by the Government, in accordance with *Article 2, paragraph 1, of the Convention*, upon ratification. In its previous comments, the Committee requested the Government to take measures on three points: (i) to ensure that no one under the specified minimum age is admitted to employment or work in any occupation, including work performed on their own account, as the Labour Code only applies to wage employment; (ii) to ensure that access to employment under the age of 15 years may be allowed, exceptionally, only from 13 years of age on light work meeting the criteria set out in *Article 7*, since it is possible for a child to work from 12 years of age under sections 47 and 89 of the Labour Code; and (iii) to determine the types of hazardous employment or work which is prohibited for persons under 18 years of age in accordance with *Article 3*.

The Committee notes the Government's indication to the effect that, in Costa Rica, the international Conventions that have been ratified possess an authority superior to laws, and that the Government intends to bring the relevant provisions of the Labour Code into conformity with the Convention. The Committee requests the Government to supply information on any progress made in the process of amending the Labour Code to bring it in line with the Convention.

As to the determination of the types of work to be prohibited for under 18 years as hazardous work, the Committee recalls that section 87 of the Labour Code (under which it is absolutely prohibited to engage the service of children under 18 years of age to carry out unhealthy, arduous or dangerous work), provides for the determination of such work by a regulation. It notes the Government's indication in its report that the Council of Occupational Health will determine such work, and also that no consultation has been made with the organizations of employers and workers as required by *Article 3 of the Convention*. The Committee recalls that *Article 3(2) of the Convention* calls for such determination after tripartite consultation, and requests the Government to provide information on any measures taken or contemplated to this effect.

Furthermore, the Committee notes the adoption of the Organic Act of the National Childhood Foundation (No. 7648, published on 20 December 1996). It requests the Government to provide information on the activities of this body, which has a wide range of mandate concerning the rights of children and young persons, in so far as they have bearing on the application of the Convention in practice.

Cuba (ratification: 1975)

With reference to its general observation (November-December 1995), the Committee notes with interest the detailed information supplied by the Government on the education system, economic and social measures, including the "Programme of Integral Attention to Minors in Social Disadvantage". The Committee requests the Government to continue to supply information on various social measures taken in so far as they have been bearing on the application of the Convention.

France (ratification: 1990)

The Committee notes the information supplied by the Government in its report concerning the comments made by the French Democratic Confederation of Labour (CFDT) in 1996. According to the CFDT, although the labour regulations respecting young workers are protective in global terms, certain occupations and activities are not covered by the general regulations or offer possibilities for derogations that are too broad, especially in agriculture and for domestic employees.

Minimum age in agriculture and for domestic employees

The Committee notes with interest that section 5 of Decree No. 97-370 of 14 April 1997 concerning conditions of employment of young agricultural workers regulates conditions of employment of the family of the farmer, who are aged under 16, taking into consideration school attendance of the child or young person. It also notes that the employment of young people over the age of 14 who are still subject to compulsory education is permitted during school holiday periods (section 3, I), for light work only (section 3, III).

The Committee notes that by virtue of section 36 of the National Collective Convention for Domestic Employees of 3 June 1980 (extended by Order of 26 May 1982), the employment of young people between 14 and 16 years old is prohibited, except during school holiday periods.

The Committee requests the Government to supply information on the application in practice of these minimum ages.

Enterprises engaging in artistic performances and modelling agencies

In its comments, the CFDT indicates that the grant of individual authorizations for participation in a performance, and of approvals to modelling agencies holding a licence allowing them to engage children without individual authorizations, is dependent on the affirmative opinion of the Departmental Councils for the Protection of Children but that these Councils are not very active, except in the Parisian region. Furthermore, these Councils do not permit employers' and workers' organizations to be consulted since they are composed of officials and judges.

The Committee recalls that *Article 8 of the Convention* allows exceptions to the prohibition of employment or work provided for in *Article 2*, for such purposes as participation in artistic performances, on specific conditions: first, after consultation with the organizations of employers and workers concerned; and secondly, delivery by the competent authority of an individual permit which prescribes the conditions in which such employment or work is allowed and limits the number of hours.

1. In regard to consultation, the Committee notes the Government's statement that organizations of employers and workers were consulted before the adoption of these provisions relating to children's employment. The Committee observes that the consultation provided in *Article 8 of the Convention* does not apply to the general provisions relating to children's employment as stated by the Government in its report but to the conditions for the grant of individual work or employment permits by the competent authorities in derogation of *Article 2 of the Convention*. It recalls that individual authorizations for participation in a performance, or approvals to modelling agencies are granted by the Prefect on the advice of a committee established under the Departmental Council for the Protection of Children. It notes that the Departmental Councils for the Protection of Children, the composition of which is established in sections R.211-3 and R.211-4 of the Labour Code, do not include representatives of the employers' and workers' organizations concerned.

The Committee requests the Government to indicate the measures taken or contemplated to ensure that exceptions to the prohibition of employment or work by persons not having yet reached the minimum age may be granted only in individual cases and after consultation with the employers' and workers' organizations concerned, in compliance with *Article 8, paragraph 1, of the Convention*.

2. In regard to the individual nature of the prior authorization, the Committee notes that under section L.211-6, 3, of the Labour Code, individual authorization is required only when the child is employed by a modelling agency holding a licence issued under section L.763-3 of the Labour Code and which has obtained from the Prefect a licence allowing it to engage children on the affirmative opinion of the committee established under the Departmental Council for the Protection of Children.

The Committee requests the Government to indicate the measures taken or contemplated to ensure compliance with the provisions of the Convention on this point.

Undeclared work

The CFDT also states that the deterioration of the employment situation of adults has been accompanied by a significant increase in work by young children in undeclared activities: the distribution of publicity as a family activity, street hawking (lilies of the valley, daffodils), "service" activities (cleaning windscreens), etc.

The Committee requests the Government to indicate the measures taken or contemplated to ensure that these activities are not undertaken by children under 16 years old, in conditions contrary to those laid down by the Convention.

Minimum age in the maritime sector

The Committee notes the information supplied by the Government in its report on the application of the Convention in the maritime sector. It notes in particular that a draft revision of the Maritime Labour Code, of which section 115 establishes a minimum age of 15 years, is at present before Parliament and should be finally adopted in the autumn of 1997 to raise the minimum age for work on board ship to 16 years. Recalling that the minimum age of 16 years was specified at the time of the ratification of the Convention, under the terms of *Article 2, paragraph 1, of the Convention*, the Committee trusts that this draft will be adopted as soon as possible.

[The Government is asked to provide a detailed report in 1998.]

Guatemala (ratification: 1990)

With reference to its previous general observation (November-December 1995) the Committee notes the information supplied in the Government's report, as well as the adoption of the Code of Childhood and Adolescence (Decree No. 78-96). It notes with interest that this Code covers children working, not only in the formal sector, but also in the informal or family sector, including self-employment, (sections 62 and 64).

The Committee noted in its previous comments that the Ministry of Labour and Social Providence, through the National Commission for Working Minors, was paying attention to the informal sector, in cooperation with concerned NGOs, so as to establish a minimum age for work, among other things. It notes with interest that section 65 of the above Code prohibits any work for people younger than 14 years of age, except for the exceptions under section 150 of the Labour Code.

While the Code of Childhood and Adolescence also contains several provisions aiming at the protection of young workers, it sets forth the right of children and young people to be protected from economic exploitation, engagement in whatever work that may be dangerous to their physical and mental health or which hinders their education (section 53(1)) and declares that childhood should be dedicated to education, sports, culture, and recreation suitable to their age (section 53(2)). The Committee notes these provisions with interest.

Furthermore, the Committee notes from the Government's report that the Plan of Social Development (PLADES 1996-2000) contains policies focused on child labour, with a view to progressive raising of the minimum age for admission to employment; that the Unit of Young Workers of the Ministry of Labour and Social Providence has been instituting awareness campaigns for employers and parents, as well as for children concerning their rights under labour law and the right to formal education; and that the

Memorandum of Understanding was signed in June 1996 with the ILO regarding IPEC (International Programme on the Elimination of Child Labour).

The Committee requests the Government to continue to supply information on developments concerning the national policy for the elimination of child labour, concrete measures taken accordingly, and progress made in the application of the Convention in practice.

Ireland (ratification: 1978)

The Committee notes the information provided by the Government, especially the adoption of new Protection of Young Persons (Employment) Act, 1996. It notes with interest that, under this Act, the minimum age for full-time work has been raised from 15 to 16 years of age. The Committee would draw the Government's attention to the possibility under *Article 2, paragraph 2, of the Convention* to declare a minimum age higher than that previously specified.

Israel (ratification: 1979)

With reference to its previous comments, the Committee notes with satisfaction the indication in the Government's report that section 2(c) and 2A(a) of the Youth Labour Act was amended in 1995 and brought into line with the requirements of *Article 7(1) of the Convention* by limiting the exceptional employment of a child between 14 and 15 years of age only to light work which is not likely to be harmful to his health or development and only during official school holidays. It asks the Government to send a copy of the Act that amended the Youth Labour Act.

Kenya (ratification: 1979)

Minimum age for employment or work

Further to its previous comments, the Committee notes from the Government's report that a task force appointed to review legal instruments on labour has agreed to amend section 2 of the Employment Act to define a "child" as a person under 15 instead of 16 years, and that this would result in lowering the minimum age for employment or work under the Employment Act to 15 years. The Committee recalls that Kenya specified 16 years as the minimum age for admission to employment or work under *Article 2(1) of the Convention* at the time of ratification. The Committee draws the Government's urgent attention to the serious discrepancy between the national legislation and the provisions of the Convention which the proposed amendment of the Employment Act would cause: *Article 2(2)* allows ratifying States to declare a minimum age higher than that initially specified but permits in no case the lowering of the declared minimum age. Member States, by ratifying the Convention, undertake the obligation by virtue of *Article 1* to raise progressively the minimum age for admission to employment or work. The Committee requests the Government to indicate any measures taken or envisaged to maintain the legislative conformity with the Convention.

National policy on child labour

The Committee notes the draft child labour policy, attached to the Government's report, to ensure the effective abolition of child labour with the help of the International Programme on the Elimination of Child Labour (IPEC). It also notes that this draft has been forwarded to the National Assembly for consideration and adoption. The Committee requests the Government to continue to supply information on developments in this draft child labour policy as well as on concrete measures taken and their effect on the application of the provisions of the Convention.

Malta (ratification: 1988)

The Committee notes the adoption of the Work Place (Protection of Young Persons) Regulations, 1996. With reference to its previous comment on *Article 2 of the Convention*, the Committee notes with satisfaction that section 3(2) prohibits not only employment under a contract of service or otherwise, but also providing work — which includes service as a homeworker or as a self-employed person — to a young person of compulsory school age (i.e. 5 years or older and has not attained 16 years of age).

Article 3, paragraph 2. The Committee also notes with interest that the Work Place (Protection of Young Persons) Regulations requires the employer to ensure that the work assigned to a young person is not beyond such young person's physical or psychological capacity, and that the Schedule of the Regulations contains a list of physical, biological and chemical agents and processes of work to which young persons (under the age of 18) cannot be exposed.

Mauritius (ratification: 1990)

The Committee takes note of the information supplied in the Government's report in reply to its General Observation (November-December 1995). It notes in particular the Government's efforts to improve the enforcement mechanism to eliminate child labour, for example by strengthening labour inspection and devoting a part of inspection time to detecting child labour, and taking education and sensitization measures so as to increase awareness of the illegality of child labour and its pernicious effects on the child's health and development. The Committee requests the Government to continue to supply information on such efforts to ensure application of the Convention. It asks the Government to reply also to the request it is addressing directly to the Government on certain points.

Nicaragua (ratification: 1981)

The Committee notes the adoption of the Labour Code (Act No. 185 of 30 October 1996). It notes with interest that the minimum age for employment (14 years) under its section 131 now covers all sectors falling within the scope of the Code, instead of only the industrial undertakings as in the previous Labour Code.

The Committee notes that the Government's report contains no other information than the signing of the Memorandum of Understanding with the ILO concerning IPEC (International Programme on the Elimination of Child Labour) of which a copy is attached. In the absence of any concrete response to its previous direct request, the Committee asks the Government to reply to the points it is raising in a direct request, concerning also the new Labour Code.

Russian Federation (ratification: 1979)

The Committee noted in the previous comment that the minimum age for employment was lowered to 15 years of age from the previous 16, by virtue of federal Act No. 182-FZ of 24 November 1995. It pointed out that the minimum age for admission to employment or work of 16 years had been specified at the time of ratification in accordance with *Article 2(1) of the Convention*, and that the lowering of the existing minimum age is contrary to the principle of the Convention, which is to raise progressively the minimum age as provided in *Articles 1 and 2(2)*.

The Committee notes the indication in the Government's report that measures are being taken to change the minimum age for admission to employment or work to 16 years of age, namely by the new draft Labour Code of the Russian Federation, which has been submitted by the Ministry of Labour to the Government of the Russian Federation for examination. It requests the Government to indicate any progress made towards the amendment of the Code in this regard, and also measures taken, pending the amendment of law, to ensure that the engagement in employment or work of children under 16 years of age is limited to the exceptions provided for in the Convention.

Slovenia (ratification: 1992)

The Committee notes with interest the detailed information supplied by the Government in its first report, in particular, the Government's efforts to introduce, for example, a family pension, for children under 15 and until they turn 26 if they remain in regular education, to compensate for maintenance by deceased parents. It requests the Government to continue to supply information on various social measures in so far as they have bearing on the application of the Convention.

The Committee notes the measures adopted by the Republic of Slovenia for the implementation of the UN Convention on the Rights of the Child, that the Ministry of Labour, Family and Social Affairs will commence a study on child labour in 1997. It requests the Government to supply a copy of this study on child labour once it has been published.

Tajikistan (ratification: 1992)

The Committee recalls that the minimum age of 16 years for admission to employment or work was specified under *Article 2, paragraph 1, of the Convention* as regards Tajikistan. It notes, however, that section 174 of the new Labour Code (Act of 15 May 1997) only prohibits the employment of persons under the age of 15 in contrast to the previous Code which fixed the minimum age of 16 years. The Committee recalls that the lowering of the existing minimum age is contrary to the principle of the Convention, which is to raise the minimum age as provided by *Articles 1 and 2(2)*. It also recalls that *Article 7 of the Convention* allows, as an exception, the employment or work of persons 13 to 15 years of age on only light work which is not likely to be harmful to their health or development and not such as to prejudice their attendance at school. Other than such light work, work done by children under 16 years of age, must be prohibited. Therefore, the Committee asks the Government to indicate the measures taken or envisaged, pursuant to its declaration under *Article 2*, to ensure that access to employment of children of 15 years of age may be allowed, exceptionally, only for work meeting the criteria set out in *Article 7*.

Venezuela (ratification: 1988)

With reference to its previous comments, the Committee notes with interest the ample information submitted with the Government's report concerning the national policy aiming at the abolition of child labour, and a wide variety of economic and social measures taken in relation to such policy. For instance, the IXth National Plan, which is a principal document of public policies and programmes, includes provisions on the promotion of participation of civil society in the protection and socialization of childhood and adolescence, special programmes aimed at the reinsertion of those who have been excluded from the education system, creation of a Social Network for Protection of Childhood and Adolescence, widening and diversification of services offered by the National Institution of Minors (INAM) for children and adolescents in especially difficult circumstances. The problem of child labour is also treated in the Intersectoral Plan of Attention to Childhood and Adolescence, including among the concrete objectives, the introduction of a system of registering children and young persons who are working, and the eradication in seven years of work by children under 12 years of age. Decree No. 1366 of 12 June 1996 establishes a programme of family subsidy, beneficiaries of which include families with low income with children receiving basic education (1st to 6th grade). Documents called "Agenda Venezuela" also contain various social measures to mitigate the effects of the macroeconomic adjustment programme.

The Committee requests the Government to continue to supply information on measures relevant to the effective abolition of child labour, and also to include statistics and extracts from reports of inspection which would help the appreciation of the application of the Convention in practice.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Belarus, Bulgaria, Costa Rica, Croatia, Cuba, Finland, France, Germany, Greece, Guatemala, Iraq, Ireland, Israel, Italy, Kenya, Libyan Arab Jamahiriya, Luxembourg, Malta, Mauritius, Nicaragua, Niger, Norway, Poland, San Marino, Slovenia, Tajikistan, Ukraine, Venezuela.*

Convention No. 139: Occupational Cancer, 1974

Guinea (ratification: 1976)

With reference to its previous comments, the Committee notes with satisfaction Order No. 93/4794/MRAFPT/DNTLS of 4 June 1993 on the prevention of occupational cancer, issued in application of the Convention and of section 171 of the Labour Code, which establishes a legal framework for protection against occupational cancer.

Guyana (ratification: 1983)

Further to its previous comments the Committee notes the Government's information in its report that, following ILO assistance and consultation with relevant agencies and persons, a final version of the draft Occupational Safety and Health Act is being prepared for submission to Parliament. The Committee hopes that the Government will soon be in a position to report on the adoption of the Act and on progress in the application of the Convention, in particular with regard to the following specific requirements of the Convention:

- the determination of carcinogenic substances or agents to which occupational exposure is prohibited or made subject to authorization or control, *Article 1 of the Convention*;
- the replacement of carcinogenic substances and agents by less harmful substances or agents, and the reduction to the minimum of the number of workers exposed and the level and duration of exposure, *Article 2*;
- the protection of workers against the risks of exposure and establishment of an appropriate system of records, *Article 3*;

- the information to be provided to workers on the dangers involved and the measures to be taken, *Article 4*; and
- medical examinations and biological and other tests and investigations for exposed workers, *Article 5*.

The Committee hopes that the Government will also provide information on the measures taken to ensure, in conformity with *Article 6(a) of the Convention*, that the necessary steps to apply the Convention are taken in consultation with the most representative organizations of employers and workers concerned.

Nicaragua (ratification: 1981)

The Committee notes the information provided by the Government in its report. In its previous comments the Committee noted the adoption of the Ministerial Resolution on Occupational Safety and Health, 1993, providing a framework within which specific aspects of occupational safety and health can be regulated. Section 3 of the resolution calls upon the Minister of Labour to determine minimum occupational safety and health requirements for, among others, chemical, physical and biological risks. Recalling that since the ratification of the Convention no specific provisions have been adopted to give effect to the Convention, the Committee expresses once again the hope that the necessary steps will be taken in the very near future, in consultation with the most representative organizations of employers and workers concerned, as called for by *Article 6 (a) of the Convention*, to ensure that effect is given to the following provisions of the Convention: *Article 1* (periodical determination of carcinogenic substances and agents to which occupational exposure is prohibited or made subject to authorization or control); *Article 2* (replacement of carcinogenic substances and agents by others less harmful and reduction of the duration and degree of exposure and the number of workers concerned); *Article 3* (special measures of protection against the risks of exposure and establishment of a system of records); *Article 5* (medical or biological examinations of workers concerned during the period of exposure and thereafter, as necessary).

[The Government is asked to report in detail in 1999.]

Peru (ratification: 1976)

With reference to the comments it has been making for many years, the Committee notes with satisfaction Supreme Decree No. 089-93-PCM, as amended by Supreme Decree No. 007-93-TR, issuing regulations on the prevention and control of occupational cancer.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Egypt, France, Guinea, Hungary, Iraq, Peru, Slovenia, Switzerland, Syrian Arab Republic, Uruguay*.

Convention No. 140: Paid Educational Leave, 1974

A request regarding certain points is being addressed directly to *Azerbaijan*.

Convention No. 141: Rural Workers' Organisations, 1975

India (ratification: 1977)

The Committee notes that the Government's report does not reply to its previous comments. It must therefore repeat its previous observation which read as follows:

> The Committee had noted that the National Commission on Rural Labour (NCRL) had recommended central legislation for agricultural labour to include, among others, a provision for enabling the formation of trade unions of agricultural labourers to carry on their activities under applicable laws. According to the Government, these recommendations had been referred to a group of Labour Ministers of state governments for study and report. The Government is requested to indicate in its next report the progress made with respect to the NCRL recommendations and any measures taken as a result.
>
> 1. *Refusal of the Government of Maharashtra to negotiate with muster assistants employed through the Employment Guarantee Scheme.* In its earlier comments, the Committee noted that, despite a Bombay High Court decision striking down a notification issued by the Government providing that muster assistants (workers that provide water or medical facilities at work sites) were not covered under the Industrial Disputes Act (IDA), 1947, or the Trade Unions Act, 1948, the Government still refused to negotiate with these workers. In its latest report, following several court judgements which rejected the Government's previous contention that muster assistants were part of the Employment Guarantee Scheme and provided that pay scales applicable to muster assistants of the Public Works and Irrigation Department should also be applicable to other muster assistants, the Government states that it is clear that these individuals have been treated as government servants and not as rural workers, thus the Convention does not apply to them.
>
> The Committee recalls, however, its previous comments in which it considered that muster assistants were persons engaged in related occupations in a rural area as defined by *Article 2 of the Convention*. The Government is therefore requested to indicate, in its next report, the legislation which governs the rights of these workers under the Convention as well as any steps taken to promote the widest possible understanding of the need to further the development of rural workers' organizations, including for muster assistants, as provided for under *Article 6 of the Convention*.
>
> 2. *Alleged inadequate pay and service conditions of female workers employed in the state government's "Integrated Child Development Scheme".* While noting that the Government maintains its position that the female workers in the Integrated Child Development Scheme (ICDS) cannot be considered to fall within the Convention's definition of rural workers even though they are mainly located in rural and tribal areas, the Committee still considers that these workers are covered by the "related occupations" provision in Article 2. While further noting from the Government's report that there are no restrictions to the constitutional guarantee of freedom of association, the Committee would nevertheless request the Government once again to provide more information respecting the steps taken to *facilitate* the establishment and growth, on a voluntary basis, of strong and independent organizations of these workers, without discrimination, as provided in *Article 4*.
>
> 3. *Working conditions and wages of forest and brick-making workers.* The Committee recalls the earlier comments made by the Hind Mazdoor Sabha Union (HMS) stating that the conditions of forest and brick workers were equivalent to that of bonded labour and that the state government had failed to help encourage the organization of these workers. In its latest report, the Government has indicated that enforcement of the labour legislation extended to these workers has not been satisfactorily managed due to the inadequacies of the labour inspection machinery to ensure that workplaces scattered over wide areas are inspected regularly. Resource constraint has come in the way of effective enforcement and bringing about improvements in this direction. The Committee hopes that the Government will be in a position to take measures in the near future to improve the enforcement machinery of laws covering rural workers, including forest and brick-making workers, and requests the

Government to indicate the steps taken to facilitate the establishment and growth, on a voluntary basis, of strong and independent organizations of these workers.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Philippines (ratification: 1979)

The Committee notes the information provided in the Government's report.

Article 3 of the Convention. In its previous comments, the Committee recalled the concern raised by the Federation of Free Farmers (FFF) in 1991 with respect to section 241(c) and (p) of Rule II(3)(d) of Book V of the Labor Code which impose direct elections by secret ballot of local and national officers and the organization of direct members into locals and chapters. The Committee had already considered these legislative provisions to be incompatible with the principles of freedom of association set forth in Article 3 given the particular difficulties facing rural workers' organizations in assembling their members scattered around the country to elect their union leaders by direct ballot and given the principle that each rural workers' organization should be able to choose in full independence the organizational structure it deems most appropriate.

The Committee notes with interest the Government's statement that it gives due attention to the difficulties being faced by rural workers' organizations as they comply with conditions for registration set forth in these sections of the Labor Code, and that the Bureau of Rural Workers (BRW) of the Department of Labor and Employment (DOLE) has proposed to come up with separate rules and regulations governing rural workers and other informal sectors which will take into consideration the peculiarities of these sectors and the need to make such rules and regulations compatible with *Article 3 of the Convention*. The Committee asks the Government to indicate, in its next report, the progress made in this regard.

The Committee also notes from the Government's report the issuance of a new DOLE Order No. 9 of 1997 (amending the Rules Implementing Book V of the Labor Code) and requests the Government to transmit a copy of this Order with its next report.

[The Government is asked to report in detail in 1999.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Brazil, Costa Rica, El Salvador, Guatemala, Zambia*.

Convention No. 142: Human Resources Development, 1975

Afghanistan (ratification: 1979)

The Committee refers to its observation on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in which it notes the allegations that access to all levels of general, technical and vocational education is prohibited for women. The Committee recalls the Government's obligation under the Convention to develop policies and programmes to encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work. It hopes to find in the Government's next report full information on women's access to education and training and measures taken in this respect.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Latvia, Niger, Tunisia, Turkey*.

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976

Bahamas (ratification: 1976)

1. With reference to the comments it has been making for many years, the Committee notes with regret that the Government's report covering the period ending on 31 May 1997 still provides insufficient information for the Committee to assess fully the effect given to the fundamental provisions of the Convention.

2. The Committee recalls that the Convention covers primarily tripartite consultations to promote the implementation of international labour standards, and once again asks the Government to provide detailed replies in its next report to the questions raised in the report form under *Articles 2, 5 and 6*, taking account of the following indications.

Article 2 of the Convention. Please describe how the nature and form of the procedures followed by the Joint Tripartite Advisory Committee or the representative organizations of employers and workers ensure that effect is given to this Article, *paragraph 1* of which requires the consultations covered by the Convention to address all the subjects listed in *Article 5, paragraph 1*. Consultation procedures must be effective, which means that they must enable employers' and workers' organizations to comment usefully on the subjects in question. The consultations must therefore be held before the Government takes a decision.

Article 5, paragraph 1. Please provide particulars of the consultations held on each of the subjects mentioned below, including information on their frequency and the nature of any reports or recommendations made as a result of the consultations. In this connection the Committee recalls that some of the subjects (replies to questionnaires, submissions to the competent authorities, reports to be submitted to the ILO) require yearly consultation, whereas others (re-examination of unratified Conventions and Recommendations, proposals for the denunciation of ratified Conventions) need less frequent review.

Subparagraph (a) (Items on the agenda of the International Labour Conference). Under this provision, the Government is required to consult the representative organizations of employers and workers before drafting the final text of its replies to ILO questionnaires. These consultations should cover not only replies to the questionnaires sent in preparation for a first discussion, but also the Government's comments on draft texts drawn up by the ILO as a basis for the second discussion.

Subparagraph (b) (Submission of Conventions and Recommendations to the competent authorities). On this point the Committee stated in its General Survey of 1982 (paragraph 109) that the Convention goes beyond the obligation to submit stipulated in article 19 of the ILO Constitution and requests governments to consult the representative organizations before finalizing its proposals to the competent authority concerning the Convention and Recommendations which must be submitted to it. An exchange of views or information after the instruments have been submitted to the competent authority would therefore not meet the purpose of the Convention.

Subparagraph (c) (Re-examination of unratified Conventions and Recommendations). The purpose of tripartite consultations on this subject is to promote the implementation of international labour standards by allowing the Government to envisage, through changes in national legislation and practice, the measures which might be taken in order to facilitate the ratification of a Convention or the implementation of a Recommendation, which were unable to be put into effect at the time of submission.

Subparagraph (d) (Reports on ratified Conventions). This provision goes beyond the reporting obligation laid down in article 23, paragraph 2, of the Constitution. It requires consultations on problems that may arise out of reports to be made under article 22 on the application of ratified Conventions. As a rule such consultations concern the content of the reply to the comments of the supervisory bodies.

Article 6. This provision requires the Government to consult the representative organizations of employers and workers on the need to produce an annual report on the working of the procedures provided for in the Convention. If there have been no such consultations, the Committee would be grateful if the Government would hold them as soon as possible and provide information on their outcome.

Côte d'Ivoire (ratification: 1987)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes the information supplied by the Government in reply to its previous comments.
>
> In particular, it notes with interest Order No. 834 of 26 January 1995 establishing a tripartite committee on matters concerning the ILO with the exclusive function of issuing opinions on each of the matters set out in *Article 5, paragraph 1, of the Convention*.
>
> The Committee notes that the tripartite committee will meet quarterly and will produce an annual report of which a copy will be sent to the ILO, in accordance with *Article 6*. The Committee hopes that this consultative body will be fully operational in the near future and that the Government will be able to supply complete and detailed information on the consultations which have taken place during the period covered by the next report on the matters covered by the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

India (ratification: 1978)

1. The Committee has noted the Government's last report and the communication sent to the ILO in August 1997 in response to its previous observation. The Committee also notes the observations made by the Standing Conference of Public Enterprises (SCOPE), the Indian National Trade Union Congress (INTUC), the trade union organization Hind Mazdoor Sabha (HMS) and the Centre of Indian Trade Unions (CITU), together with the Government's responses.

2. In its communication the Government indicates that the representative organizations of employers and workers are regularly consulted on various matters relating to the standards and activities of the ILO, in particular those laid down in *Article 5, paragraph 1(a) and (c), of the Convention*. Following consultations, the Government is preparing to ratify certain ILO Conventions, in particular the priority Conventions Nos. 105 and 122, and also Convention No. 127. Finally, the Government indicates that in view of the numerous political changes which have occurred in India from 1996 to the beginning of 1997, it has been difficult to undertake tripartite consultations during this period, in particular within the Tripartite Committee on Conventions which is in fact scheduled to meet soon.

3. In its observation, SCOPE indicates that the Convention is applied in a satisfactory manner. The observation made by INTUC pertains to the preparation of reports to be submitted to the ILO. The trade union organization suggests to the Government that it should consult the representative organizations of employers and workers, before sending the final versions of reports. In its observation, the CITU repeats its previous comments regarding the irregular nature of the tripartite consultations, in particular those relating to the application of ILO standards, despite the comments made by the Committee. In its responses, the Government indicates that consultation with union organizations in the preparation of reports to be submitted to the ILO is an obligation emanating from the provisions of the ILO Constitution. It adds that in practice consultations on the ILO's activities follow a well established procedure. The questionnaires on the items included in the agenda of the International Labour Conference are sent to the representative organizations. Their comments are forwarded to the ILO or attached to the Government's reports. In this regard, copies of the reports sent to the ILO are systematically forwarded to them.

4. The Committee invites the Government to provide details, in its next report, of the activities undertaken as a result of the concerns expressed by the union organizations. In addition, it requests the Government to furnish more detailed information on the consultations undertaken not only within the Tripartite Committee on Conventions, but also on each of the matters provided for in *Article 5, paragraph 1, of the Convention*.

Sierra Leone (ratification: 1985)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> The Committee notes that the Joint Consultative Committee has met several times to debate the new labour legislation. It wishes to recall that the tripartite consultations referred to in the Convention are essentially designed to promote the implementation of international labour standards and concern, in particular, the matters defined and set out in *Article 5, paragraph 1, of the Convention*. The Committee therefore requests the Government to supply full and detailed information on any tripartite consultations held, including their frequency, on the subject of:
>
> (a) government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;
>
> (b) the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organization;
>
> (c) the re-examination at appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;
>
> (d) questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution of the International Labour Organization;
>
> (e) proposals for the denunciation of ratified Conventions.
>
> The Government is also requested to indicate the nature of any reports or recommendations made as a result of such consultations.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Spain (ratification: 1983)

The Committee notes the Government's report and the information which it contains in reply to its previous observation. The Government refers to the exchanges of information which have taken place during the period covered by the report. In addition, it indicates that no action has been taken as a result of the Committee's previous comments, since no alternative consultation procedure has been proposed by the representative organizations of employers and workers. In this regard, the Committee wishes to recall that in its 1982 General Survey it distinguished the simple exchange of information from consultation which constitutes a process assisting in decision-making (paragraph 42). Furthermore, the Committee notes that the Government's report contains insufficient information in response to its previous comments and trusts that in its next report it will provide complete replies to the questions raised in its previous observation which read as follows:

> The Committee notes the comments received from the Trade Union Federation of Workers' Commissions (CC.OO.) in May 1995 and from the General Union of Workers (UGT) in July 1995. The Committee also notes the Government's report, received in August 1995, which refers to the comments made by the UGT and provides information in response to the Committee's previous observation.
>
> 1. The Committee notes that the General Union of Workers (UGT) reiterates its previous comments, alleging that the Government still does not hold effective consultations on ILO standards and activities. In particular, the UGT denounces the lack of consultations on the re-examination of unratified Conventions (*Article 5, paragraph 1(c) of the Convention*) and the difficulties encountered in holding effective consultations on the Government's reports due under article 22 of the ILO Constitution (*Article 5, paragraph 1(d)*). The workers' committees consider that the Economic and Social Council is not an appropriate body to supervise the application of the Convention and that the trade unions have not been consulted on the required procedures. The CC.OO. recalls in particular that *Article 2 of the Convention* lays down the obligation to ensure effective consultations which, under the terms of *Article 5, paragraph 2*, shall be undertaken at appropriate intervals fixed by mutual agreement.
>
> 2. The Committee notes the Government's statement in its report that it is ready to find any solution that resolves the practical problems of application raised. The Government emphasizes that it has established direct personal contacts in order to ensure that all written communications are received by the competent bodies of all the social and economic organizations. It also refers to a possible change in the system of consultation, provided that this is explicitly accepted by all the parties involved.
>
> 3. The Committee recalls that the Convention lays down that the nature and form of the consultation procedures shall be determined in accordance with national practice. Member States are obliged only to ensure that they are "effective", as required by *Article 2, paragraph 1*. With reference to its General Survey, the Committee points out once again that effective consultations are consultations which enable employers' and workers' organizations to have a useful say in matters relating to the activities of the ILO referred to in the Convention and the Recommendation. In the case under consideration, it observes that the above-mentioned workers' organizations do not consider written communications to be sufficient to give full effect to the provisions of the Convention. In these circumstances, and taking into account the positive attitude of the Government, the Committee considers it appropriate to suggest that the parties concerned would study the other possible methods proposed by Recommendation No. 152, though the list of such methods is not exhaustive. In addition, the Committee also recalls that *Article 6* provides for the issue of an annual report on the working of the procedures "when this is considered appropriate after consultation with the representative organizations".
>
> 4. The Committee trusts that the Government will supply, in its next detailed report on the application of the Convention, information on the progress achieved with a view to operating appropriate procedures in order to ensure effective consultations to the satisfaction

of all the parties concerned, taking into account the observations made, on the one hand, and the national practice, on the other hand.

The Committee requests the Government once again to take the measures necessary, as soon as possible, to bring its practice into full conformity with the essential provisions of the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Azerbaijan, Bangladesh, Barbados, Belarus, Brazil, Chile, China, Costa Rica, Denmark, Egypt, El Salvador, Estonia, France, Gabon, Greece, Guatemala, Guyana, Hungary, Indonesia, Kenya, Lithuania, Malawi, Mauritius, Mexico, Namibia, Netherlands, New Zealand, Nicaragua, Pakistan, Philippines, Poland, Portugal, Romania, Sao Tome and Principe, Sri Lanka, Suriname, Swaziland, Syrian Arab Republic, United Republic of Tanzania, Togo, Ukraine, Venezuela, Zambia, Zimbabwe.*

Information supplied by *Belgium* in answer to a direct request has been noted by the Committee.

Convention No. 146: Seafarers' Annual Leave with Pay, 1976

Italy (ratification: 1981)

Further to its previous comments regarding the application of *Articles 8, 9 and 11 of the Convention*, the Committee notes with satisfaction that the provisions of the Convention are being applied by means of the national collective agreement of the sector between the representatives of public and private shipowners and the representatives of seafarers, and in particular by its section 52.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Finland, France, Iraq, Morocco, Portugal.*

Convention No. 147: Merchant Shipping (Minimum Standards), 1976 [and Protocol, 1996]

Japan (ratification: 1983)

The Committee notes the information in the Government's report.

Article 2(a) of the Convention. (Conventions listed in the appendix but not ratified by Japan.)

Convention No. 53, Article 3, paragraph 1. Since its first comments in 1988 on the application of the Convention, the Committee has continually referred to the problem of non-certificated seafarers performing navigational watch duties under the supervision of an officer certificated for watch duty. The Committee has previously noted the Government's position that advances in maritime equipment since the date of the Convention (1976) obviate the need to restrict watchkeeping to officers holding appropriate certificates.

In this regard, the Committee refers again to comments by the All Japan Seamen's Union in January 1995 (appended to the Government's 1995 report) complaining of the dangers in (i) allowing solo navigational watch by unlicensed crew, and (ii) that "the number of crew members aboard vessels of less than 700 gross tons are very few and the crew work for long hours. Such navigational watch and long working hours cause a number of maritime accidents directly and indirectly", the union alleges.

In addition, the Committee recalls the undertaking by the Government, set forth in *Article 2(e) of the Convention*, "to ensure that seafarers employed on ships registered in its territory are properly qualified or trained for the duties for which they are engaged, due regard being had to the Vocational Training (Seafarers) Recommendation, 1970 (No. 137)". The Committee notes that the latter sets forth policy objectives, in particular, paragraph 18(3): "Special attention should be given to the ability of masters, other officers and ratings to navigate and handle new types of ships safely."

Therefore, the Committee considers that certain safety standards covering the most dangerous aspects of maritime navigation (activities which are discernable with reference to the principal international maritime instruments) cannot be dealt with approximately or equivocally. The degree of compliance with such standards cannot be altered when so doing could reasonably result in considerable loss of life.

In addition, the Committee recalls from the Government's 1994 and 1996 reports that consultations with shipowners' and seafarers' organizations on the aforementioned points are still continuing. The Committee requests the Government to (i) report on the progress of these ongoing consultations, and (ii) to indicate legislative changes either taken or envisaged so as to bring national legislation into compliance with the Convention.

United Kingdom (ratification: 1980)

For a number of years the Committee has been commenting on the implementation of the requirement under *Article 2(a)(i) of the Convention* that there should be laws or regulations for ships registered in the territory laying down safety standards, including hours of work, so as to ensure the safety of life on board ship. The Committee notes from the Government's report that this matter is now governed by the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations, 1997.

The Committee notes that, while Regulations Nos. 7, 8 and 9 do address the issue of hours of work on board ship, they do not appear to ensure the safety of life on board ship, as required by the Convention, since they are subject to the proviso *so far as is reasonably practicable*. On the other hand, Regulation No. 11 does provide that watchkeeping arrangements must be *at all times adequate* for maintaining safe navigational and engineering watches.

The Committee recalls the particular importance attached to this requirement of the Convention, as indicated in its earlier observations and in the comments of the Trades Union Congress. The safety requirement calls for legislation in respect of hours of work relating not only to watchkeepers (see paragraph 96 of the 1990 General Survey of the Convention). The Committee would be grateful if the Government would provide information enabling it to determine whether, in law and in practice, the Regulations can be regarded as adequate to that purpose, and if it would indicate any further measures taken or proposed in this regard.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Brazil, Canada, Japan, Kyrgyzstan, Russian Federation, Tajikistan, United Kingdom, United States*.

Convention No. 148: Working Environment (Air Pollution, Noise and Vibration), 1977

Brazil (ratification: 1982)

The Committee notes the observations communicated by the Trade Union of Workers in the Civil Construction Industry, supported by the Trade Union of Mine and Metallurgy Workers (SINDIMINA), the Trade Union of Clothing and Textile Industry Workers (SINDITEXTIL), the Trade Union of Water Industry Workers, the Trade Union of Bakers and Pastry Cooks, the Trade Union of Port Workers (SINPESE), the Trade Union of Security Company Workers and the Trade Union of Oil Workers (SINDIPETRO), which are all workers' organizations in the State of Sergipe. These organizations allege that the Regional Delegate of the Ministry of Labour prohibits inspectors from being accompanied by workers' representatives.

The Committee notes the Government's reply, according to which the allegations of the above-mentioned organizations are not based on any proof of irregularities whatsoever.

With reference to its previous comment, the Committee recalls the examination of the application of *Article 5, paragraph 4, of the Convention*, providing the opportunity for representatives of the employer and representatives of the workers of the undertaking to accompany inspectors supervising the application of the measures prescribed in pursuance of the Convention, following an observation communicated by the Trade Union of Chemical and Petrochemical Industry Workers (SINDIPOLO). On that occasion, the Government referred to a draft standard sent to members of the National Labour Council for discussion before its publication in the *Official Gazette*.

In the absence of new information on the follow up concerning this draft standard, the Committee requests the Government to supply a copy of the text once it is published along with all information on the application in practice of the right of workers' representatives to accompany inspectors supervising the application of the measures prescribed in pursuance of the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Belgium, Brazil, Hungary, Slovakia, United Republic of Tanzania***.

Convention No. 149: Nursing Personnel, 1977

A request regarding certain points is being addressed directly to ***Latvia***.

Convention No. 151: Labour Relations (Public Service), 1978

Uruguay (ratification: 1991)

The Committee notes the observation of the Confederation of Civil Servants' Organizations (COFE) relating to the application of the Convention, received in June 1997, and requests the Government to send its comments on this matter in its next report.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: ***Azerbaijan, Hungary, Poland, Turkey***.

Convention No. 152: Occupational Safety and Health (Dock Work), 1979

Brazil (ratification: 1990)

The Committee notes the Government's report as well as the comments made by the Trade Union of Dockers of the ports of the State of Espiritu Santo.

1. In its previous comments, the Committee observed that there were still shortcomings in national legislation in ensuring the application of the Convention. It noted the draft safety and health standards for dock work published in May 1995, and also the establishment of organizations to collect suggestions on it from persons and bodies, after the publication of the draft.

The Government states that a tripartite working group was established by the secretariat for the Occupational Safety and Health of the Ministry of Labour so as to analyse the suggestions of the legal section of the Ministry of Labour and to accomplish the preparatory phase towards the publication of the Dock Work Standards giving effect to the Convention.

The Committee again expresses the hope that this regulatory text will be adopted in the very near future to give effect to the provisions of the Convention, in particular its *Article 4*, according to which the national legislation should prescribe, as regards dock work, that measures complying with *Part II of the Convention* be taken.

2. In its previous comments, the Committee drew the Government's attention to the need to adopt specific measures to protect the safety and health of workers in the port sector taking into account that serious and fatal accidents happened in this sector. In this regard, the Committee notes that, according to the Trade Union of Dockers of the port of the State of Espiritu Santo, the general situation has not improved and that there are still serious work accidents (sometimes fatal ones). The tripartite group set up to prepare the final text of occupational safety and health standards in the port sector has accomplished its work in August 1996.

The Committee trusts that the Government will take in due course the necessary measures aimed at ensuring the application of the Convention on the subject and guaranteeing the safety in dock work.

3. In its previous comments, the Committee requested the Government to attach: (i) extracts from inspection reports; (ii) information on the number of workers covered by the legislation, the number and nature of violations reported and the measures taken as a result of them; as well as (iii) the number of work accidents and occupational diseases recorded. The Committee reiterates the request that the Government should communicate such information and documentation *(point V of the report form)* so as to give a general appreciation of the manner in which the Convention is applied.

Convention No. 153: Hours of Work and Rest Periods (Road Transport), 1979

Ecuador (ratification: 1988)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

> The Committee notes the Government's report and its reply to the previous comments. It notes that the National Traffic and Land Transport Council, after a first analysis of the legal

> and technical aspects of the implementation of the Convention, has been asked to set up an inter-institutional committee with a specific short-term mandate. A study on the matter also recommends that the ILO technical assistance should be requested.
>
> The Committee hopes that the Government will shortly be able to establish the exact attributions of each sector of the administration in order to facilitate the application of the provisions of the Convention, so that it will then be in a position to provide the information requested on the laws and regulations that give effect to the provisions of the Convention, and on its application in practice, as required by the report form.
>
> The Committee also notes a communication sent by the Ecuadorian Central of Class Organizations, which alleges that there is a lack of any machinery to supervise the application of the Convention. It hopes that the next report will also contain comments which the Government might consider appropriate to make on this matter.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Uruguay (ratification: 1989)

The Committee notes the Government's report as well as the information provided in reply to its previous observation. It notes with interest the indication that the Decrees of 17 and 23 August 1994 include the driver category in the definition of the vehicle crew of urban passenger transport of the district of Montevideo. Furthermore, referring to its previous comments, the Committee notes that the Government supplies detailed information in reply to *points III and IV of the report form*. It would be grateful if the Government would also supply all relevant information on consultations undertaken in application of *Article 3 of the Convention*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Switzerland, Venezuela*.

Convention No. 154: Collective Bargaining, 1981

Spain (ratification: 1985)

The Committee has noted the comments on the application of the Convention made by the Trade Union Confederation of Workers' Commissions in its communication of 27 May 1997. This organization alleges that the Government has failed to fulfil the clause concerning wage increases for 1997 contained in the "Administration-Trade Union Agreement for 1995-1997 on Working Conditions in the Public Service" concluded on 15 September 1994.

The Committee observes that this matter has already been submitted to the Committee on Freedom of Association in Case No. 1919 (see 308th Report, paragraphs 273-326, approved by the Governing Body at its 270th Session (November 1997)) and refers to the last part of the conclusions and recommendations of this body, which is as follows:

> *(...) the Committee recalls that the right to bargain collectively is one of the procedures mentioned in Convention No. 151, ratified by Spain, and that this procedure has been retained in Spanish legislation for determining the labour relations in the public service. The Committee therefore expresses the firm hope that the Government, in accordance with its own national legislation, will have recourse to collective bargaining in order to determine the conditions of employment of public servants. Furthermore, the Committee must emphasize that*

mutual respect for the commitment undertaken in the collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground. (See 308th Report of the Committee, paragraph 325.)

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Azerbaijan, Lithuania, Ukraine*.

Convention No. 155: Occupational Safety and Health, 1981

Brazil (ratification: 1992)

Further to its previous comments, the Committee notes the Government's reply to the observations made by the Union of Chemical Industry Workers of ABC and the observations from the Union of Workers of the Food Industries of Jundiaí, Cajamar, Campo Limpo Paulista, Louveira, Itupeva, Várzea Paulista and Vinhedo, the Union of Workers of the Print Industries of Jundiaí and the Union of Workers of the Mechanical and Electrical Material Industries of Jundiaí, Várzea Paulista and Campo Limpo Paulista.

1. The Committee noted the observations made by the Union of Workers of the Chemical, Petrochemical, Pharmaceutical, Paints and Varnishes, Plastics, Synthetic Resins, Explosives and Similar Industries of ABC and its affiliate, the Association of Workers Occupationally Contaminated by Organo-chlorates, in communications dated 31 August and 14 November 1995, and 16 April 1996. According to the above organizations, since 1976 two factories in the Cubatão region, one of which produced sodium pentachlorophenate ("penta") and the other carbon tetrachlorate and perchloroethylene ("tetraper"), caused irreversible damage to the health of their workers and to the local environment by their production methods and toxic wastes.

In its reply, the Government refers to the court decision of 4 June 1993 concerning the ban on the activity of the Chemical Unit of Cubatão, on the grounds that it was harmful to workers and the environment. The Government states that, on 14 June 1995, an agreement was signed by the public authority of the State of São Paulo the Union of Workers of the Chemical, Petrochemical and Pharmaceutical Industries and the enterprise in question, setting out environmental obligations, provisions on health and provisions for the compensation of the damage incurred, environmental rehabilitation and medical supervision of the workers employed in the Cubatáo Chemical Unit. Compliance with the agreement will be supervised by the public authority and by the Union of Workers of the Chemical, Petrochemical and Pharmaceutical Industries as regards the health of the workers. In this connection, following the ban on the activity of the enterprise, the employees continue in paid unemployment.

The Committee asks the Government to provide information on the implementation of the tripartite agreement as regards health and safety measures for the workers, including the compensation measures.

2. In observations of 22 May 1997, communicated to the Government, the Union of Workers of the Food Industries of Jundiaí, Cajamar, Campo Limpo Paulista, Louveira, Itupeva, Várzea Paulista and Vinhedo, the Union of Workers of the Print Industries of Jundiaí and the Union of Workers of the Mechanical and Electrical Material Industries of Jundiaí, Várzea Paulista and Campo Limpo Paulista state that there has been a significant increase in the total number of occupational accidents, including fatal accidents, citing press reports (which state that the number of accidents increased by 26.8 per cent in

1995). The above organizations state that a number of enterprises lack the right attitude to guarantee occupational safety and health (according to an estimate by doctors and experts specializing in accidents, cited by the Union, the enterprises are responsible for 70 per cent of the accidents).

In the absence of a reply from the Government on this matter, the Committee asks it to indicate the measures adopted to ensure the application of *Article 16 of the Convention*.

3. *Article 9*. The Committee notes that, in their observations, the above-mentioned organizations allege a lack of efficiency in the system of inspection which, under *paragraph 1* of this Article must be adequate and appropriate to enforce laws and regulations concerning occupational safety and health and the working environment. The above-mentioned organizations contend that the sanctions for breaches of the laws and regulations laid down in section 19 of Decree No. 55.841 of 15 March 1965 as amended by Decree No. 97.995 of 26 July 1989, which, according to *Article 9, paragraph 2, of the Convention* must be adequate, are not always applied by inspectors.

The Committee asks the Government to provide information on the functioning of the inspection services responsible for enforcing laws and regulations concerning occupational safety and health and the working environment, and on the enforcement of the sanctions established for breaches of the legislation.

Czech Republic (ratification: 1993)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points.

> The Committee noted the information provided by the Government in its first report. It noted the conclusions of the First Conference on Safety of Labour and Health Protection and in particular recommendations given by this Conference to the competent authorities and central bodies of the country in order to improve the situation in the field of occupational safety and health. The Committee also noted the observations received from the Czech-Moravian Chamber of Trade Unions (CMKOS).
>
> In its comments, the CMKOS stated that no constructive state policy has been worked out in the area of occupational safety and health which would ensure compliance with the Convention. The draft document on state policy in this matter was submitted by the Ministry of Labour and Social Affairs and discussed in April 1995. According to the CMKOS the said document has not defined a basic concept of the policy, the role of the State and the role of the social partners, and did not indicate measures contemplated at the national and regional levels. The CMKOS also indicated that the representatives of employers and employees were invited to consultations concerning a draft law on occupational safety and health which is now under preparation by the Ministry of Labour and Social Affairs; but the amendments they made concerning the absence of measures at the national, regional and company levels had not been taken into account. The CMKOS also stated that the unions' role in representing employees in matters of occupational safety and health both at the national and company levels has been weakening.
>
> The Committee noted these indications. In the absence of the Government's comments on the CMKOS observations, a copy of which was sent to the Government in February 1996, the Government is requested to indicate measures taken or envisaged to formulate and implement a coherent national policy (*Article 4 of the Convention*). The Committee draws the Government's attention to a possibility to ask for the ILO's technical assistance on occupational safety and health matters and, in particular, for advice and information on relevant comparative experiences regarding subjects raised in these observations.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

[The Government is requested to report in detail in 1998.]

Mexico (ratification: 1984)

The Committee notes the information provided by the Government in its report, together with the information supplied by the Government representative to the Conference Committee in June 1996 and the discussion which took place there on the following matters.

1. *Article 4, paragraph 1, of the Convention.* The Committee refers to the conclusions reached in June 1996 by the Conference Committee relating to the national safety and health policy in the working environment (i.e. that it is "reliable" and effective). In this respect, the Government states in its report that: (i) the policies introduced by the Mexican authorities in respect of safety and hygiene have corresponded to the development of knowledge of the different disciplines, which stipulates the conditions and provides the framework for establishing and applying effective measures designed to protect workers' health; (ii) the basis for determining the responsibilities of the Government, employers and workers in order to protect and improve workers' quality of life has been fixed in the national legislation; and (iii) each sector has assumed the obligations corresponding to it.

The Government states that through the competent bodies and other institutions the Federal Executive is carrying out activities, both relating to legislation and plans and programmes, and is examining with the relevant sectors the possibility of strengthening the legal framework for the safety, hygiene and protection of the working environment. As a result of broad consultations, new General Regulations on Safety, Hygiene and the Working Environment (RFSHMAT) were published in order to formalize the many policies, strategies, activity methods and experiences acquired, so that the Government, workers and employers may fulfil their corresponding obligations, the dynamic mechanism for adapting standard setting to the pace of the technological development of the country's production sectors may be established and the conditions for protecting workers' health be strengthened.

The Committee requests the Government to keep it informed of any developments in this respect.

2. *Article 4, paragraph 2.* With reference to its previous comments, the Committee notes the adoption on 21 January 1997 of the Federal Regulations on Safety, Hygiene and the Working Environment (RFSHMAT), which unify the various provisions in respect of safety, hygiene and the working environment. According to the statement made by the Government representative during the discussion in the Conference Committee in June 1996, the Regulations were designed to establish a series of standards which will operate better in practice and will ensure that accidents and risks are prevented. In this respect, the Government indicates that it is promoting the establishment of preventive safety, hygiene and working environment programmes in enterprises which, when supported by diagnoses of individual situations, will contribute to a reduction in the risks faced by workers.

Furthermore, the Government indicates that the trend towards a reduction in risks for workers in the six border States which began to develop in 1995 appears to be confirmed by the labour statistics for two four-month periods in 1996.

The Committee hopes that the Government will continue to make the necessary efforts to reduce to a minimum, as far as this is reasonably practicable, the causes of the risks inherent in the working environment. The Committee requests the Government to keep it informed of any progress made with a view to ensuring that the Convention is applied, in particular in the *maquiladora* enterprises which were the subject of the observations made by the Latin American Central of Workers (CLAT) in 1995.

3. *Article 17.* In its previous comments, the Committee indicated the particular importance of collaboration in certain sectors between employers when two or more undertakings engage in activities simultaneously at one workplace. The Committee requested the Government to indicate the progress made towards guaranteeing such collaboration between employers, whereby each employer is obliged to observe the provisions established in respect of safety, health and the environment. Since it has not received any information on the matter in question, the Committee is once again obliged to request the Government to indicate the measures taken or envisaged which may oblige enterprises in the situation referred to in this Article to collaborate, pursuant to the measures provided for in the Convention.

4. The Committee is addressing a direct request to the Government on a particular matter.

Uruguay (ratification: 1988)

The Committee notes that at its 270th Session (November 1997), the Governing Body adopted the report of the Committee set up to examine the representation made by the Latin American Central of Workers (CLAT) under article 24 of the ILO Constitution, alleging non-observance by Uruguay of this Convention (document GB.270/15/6).

The conclusions of the report of the above Committee emphasize that an increase or reduction in the number of fatal working accidents is an indication of whether or not the Convention is being properly applied. Without underestimating the measures taken by the Government to ensure that accidents are prevented and risks are reduced, the allegations made by the CLAT relating to the situation in respect of occupational safety and health in the construction industry cast doubt on the results of the accident, damage and risk prevention policy introduced. It is recalled that the effective fulfilment of the national policy in the area indicated depends partly on the existence and application of sufficiently dissuasive penalties in cases where legislative or regulatory provisions are infringed, as well as on tripartite activities. Furthermore, the best way in which to ensure that working accidents are prevented requires not only more comprehensive training of construction representatives and supervisors in the construction industry, but also training activities designed to disseminate knowledge of occupational safety and hygiene more widely so as to ensure that such activities involve a larger number of workers from this sector.

Under the recommendations appearing in the above report, it is proposed that the Government implement more effective tripartite activities, as well as measures relating to the various aspects of the realization and assessment of the effectiveness of the national policy designed to prevent accidents at work; that it continue to strengthen the legislative and regulatory provisions in the area in question with a view to promoting accident prevention in this sector and, in particular, to specifying in a more complete manner the respective functions and responsibilities of the social partners and other persons and institutions concerned; that it examine, at appropriate intervals, the situation in respect of occupational safety and health in the construction industry, in order to determine the problems which exist and to develop effective methods to resolve them; that it examine in particular the delivery and appropriate use of protective equipment; that it maintain and increase the labour inspection system in the industry referred to and strengthen the imposition of penalties provided for; that it broaden training activities so that they extend to the largest possible number of workers in the construction industry; that it enhance and promote, at enterprise level, cooperation between employers and workers or their representatives as an essential element of the activity designed to prevent accidents at work.

While recalling one of the Committee's conclusions according to which the determined and continuous application of measures adopted following the submission of the representation, pursuant to *Article 4 of the Convention*, as well as the fact that the assessment of such measures ensures that the accidents and injury to health arising out of work are prevented, the Committee requests the Government to provide information on the measures taken to give effect to the recommendations adopted by the Governing Body so as to ensure that the Convention is applied.

Venezuela (ratification: 1984)

1. *Article 4, paragraph 1, of the Convention.* The Committee refers to the information provided by the Government in its 1994 report, according to which the National Council on Prevention, Health and Safety at Work undertook, in consultation with the most representative organizations of employers and workers, to draw up the plans and programmes of a national policy on the health, safety and welfare of workers in their place of work. Since it has not received any information on the progress made in this respect, the Committee requests the Government to indicate what stage has been reached in the process of preparing the necessary documents as integral components of the coherent national policy on occupational safety, occupational health and the working environment.

Furthermore, with reference to its previous comments, the Committee notes that the review of the Regulations contained in the Basic Act on prevention, working conditions and the working environment is being finalized, and that the revised text will contain a series of reforms relating to the Regulations in force. The Committee hopes that the revised text of the Regulations will enable the national policy in respect of the occupational safety and health of workers and the working environment to be fully implemented for all branches of economic activity.

2. *Article 5.* With reference to its previous comments, the Committee notes that the Government indicates in its last report that a provision establishing the joint responsibility of all entities involved in occupational accidents or diseases has been included in the revised text of the Regulations. The Committee requests the Government to indicate in what form and to what extent the national policy in respect of the occupational safety and health of workers takes into account the sphere of communication and cooperation at the levels of the working group and the undertaking and at all appropriate levels up to and including the national level *(Article 5(d))*, and to provide an indication of the relationships between, on the one hand, the material elements of work and the persons who carry out or supervise the work, and on the other hand, the adaptation of machinery, equipment, working time, organization of work and work processes to the physical and mental capacities of the workers *(Article 5(b))*.

3. *Article 8.* The Committee notes with interest the progress made in reviewing the Regulations contained in the Basic Act on prevention, working conditions and the working environment, and requests the Government to provide a copy of the new text of the Regulations when they have been adopted. The Committee notes the fact that the Ministry of Labour is currently being restructured to establish a single body of overall

supervisors (for employment, labour, industrial safety and hygiene), which will ensure that precautionary, preventive and protective measures are taken in respect of workers. The Committee hopes that such measures will make the national occupational safety and health policy more effective, and the system of inspection responsible for the enforcement of laws and regulations in this area *(Article 9)* more appropriate.

4. *Article 11.* With reference to its previous comments, the Committee notes the Government's statement that the provisions of this Article of the Convention will be analysed with a view to inserting them in the revised text of the Regulations contained in the Basic Act on prevention, working conditions and the working environment. The Committee hopes that the text in question will give full effect to this Article. The Committee requests the Government to indicate the measures which have been taken by the competent authorities to ensure the discharge of functions such as the determination of conditions governing the design and construction of undertakings, the commencement of their operations and major alterations affecting them *(paragraph (a))*; the determination of work processes which are prohibited, limited or made subject to authorization or control by the competent authorities *(paragraph (b))*; the establishment and application of procedures for the notification of occupational accidents and diseases by employers *(paragraph (c))*; the holding of inquiries, where cases of occupational accidents, occupational diseases or any other injuries to health which arise in the course of or in connection with work *(paragraph (d))*; and the publication, annually, of information on measures taken in pursuance of the policy on occupational safety, occupational health and the working environment *(paragraph (e))*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Czech Republic, Ethiopia, Hungary, Iceland, Mexico, Nigeria, Slovakia, Venezuela, Viet Nam*.

Convention No. 156: Workers with Family Responsibilities, 1981

Requests regarding certain points are being addressed directly to the following States: *Chile, Yemen*.

Convention No. 157: Maintenance of Social Security Rights, 1982

A request regarding certain points is being addressed directly to *Sweden*.

Convention No. 158: Termination of Employment, 1982

Turkey (ratification: 1995)

The Committee notes the report of the committee set up by the Governing Body to examine the representation (under article 24 of the ILO Constitution made by the Confederation of Turkish Trade Unions (TÜRK-IŞ)) alleging non-observance by Turkey of the Convention, which report was approved by the Governing Body at its 268th Session in March 1997 (document GB.268/14/5). While approving the report, the Governing Body urged the Government:

- to take as soon as possible the necessary measures to give full effect to the provisions of the Convention, in accordance with *Article 1*; and

— to provide in its first detailed report on the application of the Convention full information in reply to each of the questions in the report form approved by the Governing Body, on the measures taken to this effect.

In this context the Committee notes that the Government's first report, which transmits a communication from the Turkish Confederation of Employers' Associations (TISK) dated 13 October 1997, was received only on 4 December 1997. The Committee is therefore obliged to defer examination of the report to its next session.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Democratic Republic of the Congo, Finland, Gabon, Morocco, Sweden, Uganda, Ukraine, Yemen.*

Convention No. 159: Vocational Rehabilitation and Employment (Disabled Persons), 1983

A request regarding certain points is being addressed directly to *Sao Tome and Principe.*

Information supplied by *Malta* in answer to a direct request has been noted by the Committee.

Convention No. 160: Labour Statistics, 1985

Sri Lanka (ratification: 1993)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

> The Committee noted the observation earlier presented by the Ceylon Workers' Congress, which points out the non-observance of *Article 3 of the Convention* concerning the consultation with the representative organizations of employers and workers in designing or revising the concepts, definitions and methodology used as regards the statistics covered by the Convention. It notes that the Government admits in its previous report that there is no machinery to consult the employers' and workers' organizations for these purposes. The Committee recalls that the aim of the consultation provided by this Article is to take into account the needs of employers and workers and to ensure their cooperation, and that it leaves the choice of method of the consultation to each State, which may or may not be through a statutory machinery. It requests the Government to provide information on any measures taken or envisaged to consult employers' and workers' organizations for each of the *Articles 7, 8, 10, 12, 13 and 15.*
>
> The Committee also requests the Government to supply information on the points raised in a request addressed directly to it.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bolivia, Canada, Greece, Guatemala, India, Latvia, Mauritius, Sri Lanka, Swaziland, Tajikistan.*

Convention No. 161: Occupational Health Services, 1985

A request regarding certain points is being addressed directly to the *Czech Republic*.

Convention No. 162: Asbestos, 1986

Requests regarding certain points are being addressed directly to the following States: *Cyprus, Switzerland*.

Convention No. 163: Seafarers' Welfare, 1987

Requests regarding certain points are being addressed directly to the following States: *Denmark, Norway, Slovakia, Switzerland*.

Convention No. 164: Health Protection and Medical Care (Seafarers), 1987

Requests regarding certain points are being addressed directly to the following States: *Slovakia, Sweden*.

Convention No. 165: Social Security (Seafarers) (Revised), 1987

Requests regarding certain points are being addressed directly to the following States: *Hungary, Spain*.

Convention No. 166: Repatriation of Seafarers (Revised), 1987

Requests regarding certain points are being addressed directly to the following States: *Hungary, Mexico*.

Convention No. 168: Employment Promotion and Protection against Unemployment, 1988

A request regarding certain points is being addressed directly to *Romania*.

Convention No. 169: Indigenous and Tribal Peoples, 1989

Peru (ratification: 1994)

1. The Committee notes that the Government's first report has been received. It also notes that a representation under article 24 of the Constitution has been submitted by the General Confederation of Workers of Peru alleging non-observance by Peru of this Convention, and that this representation was declared receivable by the Governing Body at its 270th Session (November 1997).

2. In these circumstances, and in accordance with its usual practice, the Committee is postponing its examination of the Government's first report to await the outcome of the representation.

* * *

In addition, a request regarding certain points is being addressed directly to *Paraguay*.

Convention No. 170: Chemicals, 1990

Requests regarding certain points are being addressed directly to the following States: *Norway, Sweden*.

Convention No. 171: Night Work, 1990

Requests regarding certain points are being addressed directly to the following States: *Dominican Republic, Portugal*.

Convention No. 172: Working Conditions (Hotels and Restaurants), 1991

Requests regarding certain points are being addressed directly to the following States: *Austria, Switzerland*.

Convention No. 173: Protection of Workers' Claims (Employer's Insolvency), 1992

Requests regarding certain points are being addressed directly to the following States: *Australia, Finland, Mexico*.

Appendix I. Table of reports received on ratified Conventions as at 12 December 1997
(article 22 of the Constitution)

Article 22 of the Constitution of the International Labour Organization provides that "each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request". Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th (November 1977) Session, the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under article 22 of the Constitution:

(a) the practice of tabular classification of reports, without summary of their contents, which has been followed for several years in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;

(b) the Director-General should make available, for consultation at the Conference, the original texts of all reports received on ratified Conventions; in addition, photocopies of the reports should be supplied on request to members of delegations.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification.

Reports received under article 22 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations. First reports appear in ***bold italics***; all other reports appear in ordinary print.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Afghanistan	0		4	105, 111, 137, 141	4
Albania	0		4	6, 58, 98, 112	4
Algeria	10	19, 81, 87, 99, 111, 119, 120, 122, 138, ***144***	6	3, 68, 91, 92, 98, 105	16
Angola	0		14	7, 26, 68, 69, 73, 74, 81, 91, 92, 98, 100, 105, 108, 111	14
Antigua and Barbuda	0		4	81, 98, 105, 111	4
Argentina	14	3, 9, 10, 26, 33, 58, 68, 81, 95, 98, 105, 111, 144, 154	1	107	15
Armenia	0		5	***100, 111, 122, 135, 151***	5

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Australia	19	9, 58, ***69***, ***73***, 81, 92, 98, 99, 105, 111, 112, 131, 133, 135, 137, 144, 158, ***166***, 173	0		19
Austria	11	26, 81, 98, 99, 103, 105, 111, 135, 141, 144, 172	0		11
Azerbaijan	15	87, 88, 92, 98, 103, 111, 119, 131, 133, 135, 140, 144, 151, 154, 160	3	120, 126, 147	18
Bahamas	4	81, 98, 105, 144	3	7, 17, 26	7
Bahrain	0		1	81	1
Bangladesh	2	98, 144	4	81, 105, 107, 111	6
Barbados	7	10, 29, 74, 87, 102, 118, 128	12	7, 19, 26, 81, 98, 105, 111, 115, 122, 135, 144, ***147***	19
Belarus	13	26, 29, ***81***, ***88***, 98, 103, ***105***, 111, 119, 120, 138, 144, 150	0		13
Belgium	15	9, 26, 68, 81, 87, 91, 92, 98, 99, 105, 111, 120, 126, 140, 144	0		15
Belize	5	26, 58, 81, 98, 105	1	99	6
Benin	4	26, 98, 105, 111	0		4
Bolivia	0		23	5, 14, 19, 20, 77, 81, 87, 98, 100, 102, 103, 105, 106, 111, 118, 120, 121, 122, 123, 128, 129, 131, 160	23
Bosnia and Herzegovina	0		32	8, 9, 13, 14, 16, 19, 22, 23, 29, 32, 53, 69, 73, 74, 81, 87, 91, 92, 98, 100, 102, 103, 111, 113, 119, 122, 126, 129, 131, 135, 138, 139	32
Brazil	24	19, 58, 81, 91, 92, 95, 98, 103, 105, 107, 111, 117, 118, 119, 120, 126, 131, 133, 135, 136, 137, 141, 144, 168	0		24
Bulgaria	8	3, 9, 26, 81, 87, 98, 111, 120	1	68	9
Burkina Faso	6	3, 81, 98, 111, 131, 135	0		6
Burundi	0		19	11, 12, 14, 17, 19, 26, 29, 42, 52, 62, 81, ***87***, 89, 90, 94, ***100***, 101, 105, ***111***	19

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Cameroon	0		14	3, 9, 10, 16, 19, 33, 81, 98, 105, 111, 123, 131, 135, 146	14
Canada	7	26, 58, 68, 105, 111, 147, ***160***	0		7
Cape Verde	4	81, 98, 105, 111	0		4
Central African Republic	16	3, 10, 13, 19, 33, 62, 81, 87, 98, 99, 100, 105, 111, 117, 118, 119	3	14, 26, 29	19
Chad	4	26, 29, 98, 111	2	81, 105	6
Chile	4	7, 26, 103, 144	3	9, 111, 127	7
China	5	7, 19, 26, 144, ***170***	0		5
Colombia	14	3, 7, 9, 24, 25, 26, 81, 87, 95, 98, 99, 105, 111, 170	0		14
Comoros	9	13, 19, 29, 81, 87, 98, 100, 105, 122	6	10, 11, 26, 33, 99, 106	15
Congo	3	26, 95, 119	0		3
Costa Rica	12	16, 87, 92, 98, 102, 105, 113, 122, 131, 135, 137, 141	4	81, 111, 120, 144	16
Côte d'Ivoire	0		14	3, 26, 29, 33, 81, 98, 99, 100, 105, 110, 111, 133, 135, 144	14
Croatia	10	9, 81, 91, 92, 98, 103, 111, 119, 135, 155	0		10
Cuba	14	9, 81, 91, 92, 98, 103, 105, 110, 111, 120, 131, 135, 137, 141	0		14
Cyprus	2	***23, 92***	11	***58***, 81, 87, 98, 105, 111, 119, 141, 144, ***147, 171***	13
Czech Republic	1	111	19	10, 13, 19, 26, 29, 87, 98, 99, 100, 102, 120, 122, 123, 128, 139, 155, 163, 164, 167	20
Democratic Republic of the Congo	0		9	19, 26, 62, 81, 84, 98, 118, 119, 120	9
Denmark	15	58, 81, 92, 98, 112, 115, 119, 120, 126, 135, 141, 144, ***155***, 163, ***167***	4	9, 105, 111, 122	19
Djibouti	18	10, 11, 13, 14, 16, 19, 24, 29, 33, 53, 55, 69, 73, 87, 100, 122, 123, 125	21	9, 26, 44, 52, 58, 77, 78, 81, 88, 91, 94, 95, 98, 99, 101, 105, 106, 115, 120, 124, 126	39
Dominica	4	81, 98, 105, 111	2	26, 97	6

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Dominican Republic	9	26, 81, 95, 98, 100, 105, 111, 119, 171	1	7	10
Ecuador	15	81, 87, 98, 103, 105, 110, 111, 112, 119, 120, 122, 131, 141, 144, 153	0		15
Egypt	13	9, 68, 81, 92, 98, 105, 111, 118, 131, 135, 137, 144, 150	0		13
El Salvador	14	***29, 77, 78, 81, 88, 99***, 105, ***111, 122, 129, 131, 141, 142, 144***	0		14
Equatorial Guinea	4	14, 100, 103, 138	0		4
Estonia	7	7, 9, 22, 23, 53, 98, 144	0		7
Ethiopia	0		2	98, 111	2
Fiji	4	26, 58, 98, 105	1	84	5
Finland	17	9, 81, 92, 98, 105, 111, 119, 120, 133, 135, 137, 141, 144, 146, 163, ***164***, 173	0		17
France	19	3, 9, 62, 68, 81, 87, 98, 100, 105, 111, 115, 118, 120, 122, 131, 135, 138, 141, 144	5	92, 126, 133, 137, 146	24
Gabon	0		10	3, 26, 81, 98, 99, 105, 111, 135, 144, 158	10
Georgia	0		2	98, 111	2
Germany	20	3, 9, 26, 81, 92, 98, 99, 105, 111, 120, 126, 133, 135, 141, 144, 147, 148, 162, 164, 167	0		20
Ghana	7	11, 16, 19, 50, 64, 81, 107	16	22, 26, 58, 69, 74, 88, 92, 98, 103, 105, 111, 119, 120, 148, 150, 151	23
Greece	14	9, 68, 81, 92, 98, 103, 105, 111, 126, 133, 135. 141, 144, 160	0		14
Grenada	0		13	10, 16, 19, 26, 29, 58, 81, ***87***, 98, 99, ***100***, 105, ***144***	13
Guatemala	16	58, 64, 81, 98, 103, 105, 110, 111, 112, 119, 120, 131, 141, 144, ***149***, 160	0		16

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Guinea	24	3, 10, 13, 16, 26, 29, 33, 62, 81, 87, 99, 100, 105, 112, 113, 118, 119, 120, 122, 133, 134, 135, 139, 152	5	98, 111, ***144***, ***156***, ***159***	29
Guinea-Bissau	3	29, 98, 105	13	7, 19, 26, 68, 69, 73, 74, 81, 91, 92, 100, 108, 111	16
Guyana	10	7, 81, 98, 105, 111, 131, 135, 137, 141, 144	0		10
Haiti	0		12	12, 17, 19, 45, 77, 78, 81, 90, 98, 105, 107, 111	12
Honduras	0		5	81, 98, 105, 111, ***169***	5
Hungary	17	7, 26, 81, ***88***, 98, 99, 103, 105, 111, 135, 141, 144, ***151***, 163, 164, 165, 166	0		17
Iceland	6	58, 91, 102, 105, 111, 144	1	98	7
India	7	26, 81, 107, 111, 141, 144, 160	1	1	8
Indonesia	4	29, 98, 120, 144	1	69	5
Islamic Republic of Iran	6	19, 29, 100, 105, 111, 122	0		6
Iraq	16	13, 19, 29, 81, 98, 100, 111, 118, 119, 122, 131, 132, 135, 138, 139, 152	8	16, 92, 105, 120, 137, 144, 146, 153	24
Ireland	12	26, 68, 81, 92, 98, 99, 100, 105, ***139***, 144, ***155***, ***160***	0		12
Israel	5	9, 81, 105, 133, 141	4	91, 92, 98, 111	9
Italy	18	9, 26, 68, 81, 92, 98, 99, 102, 103, 111, 119, 120, 133, 135, 137, 141, 144, 146	1	105	19
Jamaica	12	16, 19, 26, 29, 58, 81, 87, 100, 105, 117, 122, 150	2	98, 111	14
Japan	7	9, 81, 98, 119, 120, 131, ***156***	1	58	8
Jordan	7	81, 98, 105, 111, 119, 120, 135	0		7
Kenya	12	17, 81, 98, 99, 105, 131, 135, 137, 138, 141, 144, 146	0		12
Republic of Korea	1	81	0		1
Kuwait	0		4	81, 105, 111, 119	4

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Kyrgyzstan	1	29	19	16, 32, 69, 73, 87, 92, 98, 100, 103, 111, 113, 119, 120, 126, ***133***, 134, 138, 147, ***160***	20
Lao People's Democratic Republic	0		2	13, 29	2
Latvia	1	***160***	31	3, 7, 9, 13, 16, 19, ***81***, 87, 98, 100, 105, 106, 108, ***111***, 115, 119, 120, ***122***, ***129***, 131, ***132***, ***135***, 142, ***144***, 148, 149, 150, ***151***, ***154***, ***155***, ***158***	32
Lebanon	12	8, 9, 29, 58, 71, 81, 98, 105, 111, 120, 131, 133	0		12
Lesotho	2	26, 98	0		2
Liberia	0		15	22, 23, 29, 53, 55, 58, 87, 92, 98, 105, 111, 112, 113, 114, ***133***	15
Libyan Arab Jamahiriya	6	98, 102, 111, 118, 122, 131	14	14, 29, 52, 53, 81, 89, 95, 100, 103, 105, 121, 128, 130, 138	20
Lithuania	23	***11***, 14, 19, 24, ***29***, ***47***, ***79***, 81, ***87***, ***88***, ***90***, 98, ***100***, 111, ***127***, 131, 135, ***142***, 144, ***154***, ***159***, ***171***, 173	1	105	24
Luxembourg	11	9, 26, 68, 92, 98, 103, 105, 108, 135, 147, 166	1	81	12
Madagascar	1	100	6	26, 81, 111, 118, 119, 120	7
Malawi	0		6	26, 81, 98, 99, 111, 144	6
Malaysia	0		6	19, 29, 81, 97, 98, 119	6
Malaysia (Sabah)	0		1	16	1
Malaysia (Sarawak)	0		2	7, 16	2
Mali	0		9	26, 81, 98, 105, 111, ***135***, ***141***, ***151***, ***159***	9
Malta	2	13, 138	12	16, 19, 32, 73, 81, 98, 105, 111, 119, 131, 135, 141	14
Mauritania	4	3, 26, 81, 111	7	19, 29, 33, 58, 84, 91, 112	11
Mauritius	7	26, 81, 84, 98, 99, 105, 144	0		7
Mexico	21	9, 12, 58, 102, 105, 110, 111, 112, 120, 131, 135, 141, 144, 153, 155, 163, 164, 166, 170, 172, 173	0		21
Republic of Moldova	0		1	***105***	1
Mongolia	3	98, 103, 111	0		3

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Morocco	0		9	26, 81, 98, 99, 105, 111, 119, 146, 158	9
Mozambique	4	81, 100, 105, 111	0		4
Myanmar	0		7	16, 17, 19, 26, 29, 52, 87	7
Namibia	2	98, 144	0		2
Nepal	1	111	2	131, ***144***	3
Netherlands	28	9, 13, 16, 29, 32, 62, 68, 69, 73, 81, 92, 96, 98, 103, 105, 111, 113, 122, 126, 131, 133, 135, 137, 138, 141, 144, 146, 154	0		28
New Zealand	11	9, 26, 58, 68, 81, 92, 99, 105, 111, 133, 144	0		11
Nicaragua	8	3, 9, 19, 95, 98, 105, 111, 146	12	12, 16, 17, 24, 25, 110, 119, 131, 135, 137, 141, 144	20
Niger	0		11	81, 98, 100, 105, 111, 119, 131, 135, 138, 142, 148	11
Nigeria	0		9	19, 26, 58, 81, 87, 98, 105, 133, ***144***	9
Norway	19	9, 26, 68, 81, 91, 92, 98, 105, 111, 119, 120, 126, 133, 135, 137, 141, 144, 163, 170	0		19
Pakistan	8	29, 81, 96, 98, 105, 111, ***144***, ***159***	0		8
Panama	21	3, 9, 13, 26, 29, 32, 55, 56, 58, 68, 81, 87, 92, 98, 105, 112, 119, 120, 125, 126, ***159***	4	94, 110, 111, 122	25
Papua New Guinea	9	7, 8, 10, 12, 26, 45, 98, 99, 105	0		9
Paraguay	9	26, 29, 81, 87, 98, 99, 100, 105, 111	5	60, 119, 120, 122, 169	14
Peru	19	9, 24, 25, 26, 41, 45, 56, 58, 68, 71, 81, 88, 98, 99, 102, 105, 111, 112, 122	0		19
Philippines	6	***19***, 99, 105, ***118***, 141, ***157***	5	17, 98, 110, 111, 144	11
Poland	20	9, 68, ***81***, 91, 92, 98, 99, 103, 105, 108, 111, 119, 120, ***129***, 133, 135, 137, 141, 144, ***147***	0		20

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Portugal	18	7, 22, 68, 81, 92, 98, 103, 105, 111, 120, 131, 135, 137, 144, 146, ***158***, 160, ***171***	0		18
Qatar	2	81, 111	0		2
Romania	9	3, 9, 81, 98, 111, 131, 135, 137, 144	0		9
Russian Federation	12	92, 95, 98, 103, 108, 111, 115, 119, 120, 126, 133, 138	0		12
Rwanda	12	12, 26, 62, 81, 87, 98, 100, 105, 118, 123, 135, 138	2	19, 111	14
Saint Lucia	0		24	5, 7, 8, 11, 12, 14, 16, 17, 19, 26, 29, 50, 64, 65, 87, 94, 95, 97, 98, 100, 101, 105, 108, 111	24
San Marino	8	***29***, 98, ***105***, 111, 119, ***138***, 144, ***154***	0		8
Sao Tome and Principe	12	17, 18, 19, 81, ***87***, 88, ***98***, 100, ***106***, 111, ***144***, ***159***	0		12
Saudi Arabia	3	81, 105, 111	0		3
Senegal	17	10, 13, 19, 26, 29, 33, 81, 87, 98, 99, 100, 102, 105, 111, 120, 125, 135	0		17
Seychelles	0		6	26, 29, 58, 99, 105, ***149***	6
Sierra Leone	0		22	16, 19, 22, 26, 29, 32, 58, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144	22
Singapore	3	7, 81, 98	0		3
Slovakia	7	26, 98, 99, 111, 120, 163, 164	0		7
Slovenia	7	81, 98, 111, 119, 122, 131, 135	6	9, 91, 92, 102, 103, 126	13
Solomon Islands	11	11, 12, 14, 16, 19, 26, 29, 45, 81, 94, 95	4	8, 42, 84, 108	15
Somalia	0		12	16, 17, 19, 22, 23, 29, 45, 84, 94, 95, 105, 111	12
South Africa	1	26	0		1
Spain	23	9, 68, 81, 92, 98, 103, 105, 111, 119, 120, 126, 131, 135, 137, 141, 144, 146, 153, 163, 164, 165, 166, 172	1	***173***	24

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Sri Lanka	5	29, 58, 100, 110, 144	8	81, ***87***, 98, 103, ***108***, 131, 135, 160	13
Sudan	4	26, 29, 81, 98	3	105, 111, 122	7
Suriname	5	81, 105, 112, 135, 144	0		5
Swaziland	8	29, 81, 87, 98, 100, 105, 131, 144	2	111, 160	10
Sweden	16	9, 81, 98, 105, 119, 120, 121, 128, 135, 137, 141, 144, 146, 163, 170, ***174***	7	16, 73, 92, 111, 133, 134, 164	23
Switzerland	12	26, 58, 81, 105, 111, 119, 120, 141, 153, 163, 172, ***173***	0		12
Syrian Arab Republic	11	19, 81, 98, 105, 111, 118, 119, 120, 131, 135, 144	0		11
Tajikistan	1	***160***	8	92, 98, 103, 111, 119, 120, 126, 133	9
United Republic of Tanzania	4	16, 19, 29, 94	10	84, 88, 98, 105, 131, 134, 135, 137, 144, 152	14
Tanzania (Tanganyika)	0		1	81	1
Tanzania (Zanzibar)	0		2	58, 97	2
Thailand	1	105	0		1
Togo	6	13, 26, 98, 100, 111, 144	0		6
Trinidad and Tobago	3	19, 87, 105	3	98, 111, ***144***	6
Tunisia	7	26, 81, 91, 98, 99, 111, ***138***	4	105, 119, 120, 127	11
Turkey	13	26, 58, 59, 81, 94, 99, 105, 111, 119, 135, 144, 151, ***158***	2	98, 142	15
Uganda	6	17, 26, 29, 98, 105, 144	1	81	7
Ukraine	13	2, 92, 95, 98, 103, 111, 115, 119, 120, 126, 133, 144, 154	0		13
United Arab Emirates	1	81	0		1
United Kingdom	16	7, 44, 68, 81, 92, 98, 102, 105, 120, 122, 126, 133, 135, 141, 144, 147	0		16
United States	4	58, 105, 144, 150	1	147	5
Uruguay	20	9, ***29***, 62, 81, 98, 103, 105, 110, 111, 119, ***120***, 131, 133, 137, 138, 141, 144, 153, ***162***, ***172***	0		20
Uzbekistan	0		4	***47***, ***52***, ***103***, ***122***	4
Venezuela	7	3, 81, 87, 98, 120, 144, 155	8	22, 26, 100, 105, 111, 141, 153, 158	15

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Viet Nam	9	5, 6, 14, 27, 45, 81, 120, 124, 155	0		9
Yemen	0		19	14, 16, 19, 29, 58, 81, 87, 94, 98, 100, 105, 111, 122, 131, 132, 135, 156, 158, ***159***	19
Zambia	5	103, 111, 131, 135, 144	2	105, 141	7
Zimbabwe	5	26, 81, 99, 129, 144	0		5
Grand total	**1 211**		**716**		**1 927**
Other States					
Nauru	0		5	19, 27, 29, 42, 105	5
Samoa	0		2	14, 29	2

Note: The numbers in ***bold italics*** correspond to first reports due from Governments after ratification.

Appendix II. Statistical table of reports received on ratified Conventions as at 12 December 1997

(article 22 of the Constitution)

Period	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee		Reports received in time for the session of the Conference	
		Number	Percentage	Number	Percentage	Number	Percentage
1931-1932	447	–	–	406	90.8	423	94.6
1932-1933	522	–	–	435	83.3	453	86.7
1933-1934	601	–	–	508	84.5	544	90.5
1934-1935	630	–	–	584	92.7	620	98.4
1935-1936	662	–	–	577	87.2	604	91.2
1936-1937	702	–	–	580	82.6	634	90.3
1937-1938	748	–	–	616	82.4	635	84.9
1938-1939	766	–	–	588	76.8	–	–
1943-1944	583	–	–	251	43.1	314	53.9
1944-1945	725	–	–	351	48.4	523	72.2
1945-1946	731	–	–	370	50.6	578	79.1
1946-1947	763	–	–	581	76.1	666	87.3
1947-1948	799	–	–	521	65.2	648	81.1
1948-1949	806	134 [1]	16.6	666	82.6	695	86.2
1949-1950	831	253	30.4	597	71.8	666	80.1
1950-1951	907	288	31.7	507	77.7	761	83.9
1951-1952	981	268	27.3	743	75.7	826	84.2
1952-1953	1 026	212	20.6	840	81.8	917	89.3
1953-1954	1 175	268	22.8	1 077	91.7	1 119	95.2
1954-1955	1 234	283	22.9	1 063	86.1	1 170	94.8
1955-1956	1 333	332	24.9	1 234	92.5	1 283	96.2
1956-1957	1 418	210	14.7	1 295	91.3	1 349	95.1
1957-1958	1 558	340	21.8	1 484	95.2	1 509	96.8
1958-1959	995 [2]	200	20.4	864	86.8	902	90.6
1958-1960	1 100	256	23.2	838	76.1	963	87.4
1959-1961	1 362	243	18.1	1 090	80.0	1 142	83.8
1960-1962	1 309	200	15.5	1 059	80.9	1 121	85.6
1961-1963	1 624	280	17.2	1 314	80.9	1 430	88.0
1962-1964	1 495	213	14.2	1 268	84.8	1 356	90.7
1963-1965	1 700	282	16.6	1 444	84.9	1 527	89.8
1964-1966	1 562	245	16.3	1 330	85.1	1 395	89.3
1965-1967	1 883	323	17.4	1 551	84.5	1 643	89.6
1966-1968	1 647	281	17.1	1 409	85.5	1 470	89.1
1967-1969	1 821	249	13.4	1 501	82.4	1 601	87.9

Period	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee		Reports received in time for the session of the Conference	
		Number	Percentage	Number	Percentage	Number	Percentage
1968-1970	1 894	360	18.9	1 463	77.0	1 549	81.6
1969-1971	1 992	237	11.8	1 504	75.5	1 707	85.6
1970-1972	2 025	297	14.6	1 572	77.6	1 753	86.5
1971-1973	2 048	300	14.6	1 521	74.3	1 691	82.5
1972-1974	2 189	370	16.5	1 854	84.6	1 958	89.4
1973-1975	2 034	301	14.8	1 663	81.7	1 764	86.7
1974-1976	2 200	292	13.2	1 831	83.0	1 914	87.0
-1977	1 529 [3]	215	14.0	1 120	73.2	1 328	87.0
-1978	1 701	251	14.7	1 289	75.7	1 391	81.7
-1979	1 593	234	14.7	1 270	79.8	1 376	86.4
-1980	1 581	168	10.6	1 302	82.2	1 437	90.8
-1981	1 543	127	8.1	1 210	78.4	1 340	86.7
-1982	1 695	332	19.4	1 382	81.4	1 493	88.0
-1983	1 737	236	13.5	1 388	79.9	1 558	89.6
-1984	1 669	189	11.3	1 286	77.0	1 412	84.6
-1985	1 666	189	11.3	1 312	78.7	1 471	88.2
-1986	1 752	207	11.8	1 388	79.2	1 529	87.3
-1987	1 793	171	9.5	1 408	78.4	1 542	86.0
-1988	1 636	149	9.0	1 230	75.9	1 384	84.4
-1989	1 719	196	11.4	1 256	73.0	1 409	81.9
-1990	1 958	192	9.8	1 409	71.9	1 639	83.7
-1991	2 010	271	13.4	1 411	69.9	1 544	76.8
-1992	1 824	313	17.1	1 194	65.4	1 384	75.8
-1993	1 906	471	24.7	1 233	64.6	1 473	77.2
-1994	2 290	370	16.1	1 573	68.7	1 879	82.0
-1995	1 252 [4]	479	38.2	824	65.8	988	78.9
-1996	1 806 [5]	362	20.5	1 145	63.3	1 413	78.2
-1997	1 927	553	28.7	1 211	62.8	–	–

[1] First year for which this figure is available.

[2] As a result of a decision by the Governing Body, detailed reports were requested as from 1958-59 until 1976 only on certain ratified Conventions.

[3] As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.

[4] As a result of a decision by the Governing Body (November 1993), detailed reports on only five ratified Conventions were exceptionally requested in 1995.

[5] As a result of a decision by the Governing Body (November 1993), reports are now requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.

II. Observations on the application of Conventions in non-metropolitan territories

(article 22 and article 35, paragraphs 6 and 8,
of the Constitution)

A. General observations

Requests regarding certain points are being addressed directly to the following States: *Denmark* (Faeroe Islands and Greenland), *France* (Guadeloupe and French Polynesia).

B. Individual observations

Convention No. 8: Unemployment Indemnity (Shipwreck), 1920

France

French Southern and Antarctic Territories

With reference to its previous comments, the Committee notes that the Government's report provides no new information apart from the text of Decree No. 97-243 of 14 March 1997 regarding the registration of certain categories of vessels.

The Committee recalls that the legislation applying to vessels registered in the French Southern and Antarctic Territories, namely the Overseas Labour Code of 1952 and Chapter VI, section 26, of Act No. 96-151 with respect to the registration of vessels in these territories, contain no provisions on indemnities to be paid to seafarers in the event of shipwreck. It notes that, despite the Government's assurances, no regulations have been issued to fill the void. Consequently, the Committee cannot but stress once again that under *Article 2 of the Convention* the unemployment indemnity due to seamen in every case of loss or foundering of any vessel, shall be paid for the days during which the seaman remains unemployed, for a minimum of two months. The Committee trusts that measures will be taken very shortly to ensure that the provisions of the Convention are fully applied to the French Southern and Antarctic Territories, and would be grateful if the Government would provide information on all such measures.

Convention No. 9: Placing of Seamen, 1920

Requests regarding certain points are being addressed directly to the following States: *Denmark* (Faeroe Islands) and *France* (French Polynesia).

Convention No. 10: Minimum Age (Agriculture), 1921

Requests regarding certain points are being addressed directly to the following States: *France* (French Guiana, French Polynesia, Guadeloupe, Martinique and St. Pierre and Miquelon), *Netherlands* (Netherlands Antilles).

Information supplied by *France* (Réunion) in answer to a direct request has been noted by the Committee.

Convention No. 13: White Lead (Painting), 1921

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 16: Medical Examination of Young Persons (Sea), 1921

A request regarding certain points is being addressed directly to *Denmark* (Faeroe Islands).

Convention No. 17: Workmen's Compensation (Accidents), 1925

Netherlands

Aruba

The Committee notes the information supplied by the Government in reply to its previous comments and, in particular, that discussions have begun between the representatives of the Ministry of Labour and the social security institution in order to incorporate the provisions of *Article 7 of the Convention* into legislation on occupational accidents. The Committee therefore hopes that a provision guaranteeing additional compensation to the victims of industrial accidents suffering from incapacity requiring the constant help of another person will be adopted in the near future in order to ensure full application of the provisions of this Article of the Convention and of those of Article 16 of Convention No. 121 which is also applicable to Aruba.

Henceforth, the Committee will examine the question of compensation for occupational accidents under Convention No. 121.

Netherlands Antilles

The Committee notes with satisfaction the adoption of the Ordinance of 25 June 1996, amending Ordinance No. 14 of 1966, concerning compensation for industrial accidents and, particularly, its section 4. The Committee notes that the medical care and treatment provided for the victim include "the constant help of another person" for such time as may be necessary in view of the consequences of the accident, which ensures conformity with *Article 7 of the Convention*.

Convention No. 19: Equality of Treatment (Accident Compensation), 1925

France

French Polynesia

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

> *Article 1, paragraph 2, of the Convention.* In reply to the Committee's previous comments, the Government states that the governing council of the Social Insurance Fund issued a favourable opinion at its meeting on 26 February 1993 for the amendment of section 29 of Decree No. 57-245 of 24 February 1957, with a view to ensuring that the nationals of a member State that has ratified the Convention are granted the same benefits as French

insured persons, without any condition as to residence. It adds that the draft Decision for this purpose, which was transmitted on 21 April 1993 by the labour inspection service to the Government of French Polynesia, has still to be examined by the Territorial Assembly. The Committee takes due note of this information. It hopes that the above draft text will be adopted in the near future and that the Government will not fail to provide a copy of it as soon as it is adopted.

Convention No. 22: Seamen's Articles of Agreement, 1926

France

French Southern and Antarctic Territories

The Committee notes that the Government's report does not reply to the points raised. It is therefore obliged to repeat its previous observation concerning the following points:

> The Committee recalls that, under the Labour Code, seamen's articles of agreement are governed by special provisions contained in the Maritime Labour Code — CTM (Act of 13 December 1926). Under the general provisions of this Code, and in view of the specific nature of maritime work, any contract concluded between a shipowner or his representative and a seafarer, whose object is the performance of a service on board ship for the purpose of a voyage, is a maritime labour contract governed by the provisions of this Act.
>
> The Committee also notes that section 4 of the CTM provides that maritime labour contracts are governed by two sets of provisions: by the CTM for the periods in which the seafarer is on board, and by the Labour Code outside these periods.
>
> However, the Committee recalls that the contracts of seafarers employed on ships registered in the French Southern and Antarctic Territories (TAAF) are subject to the provisions of the Overseas Labour Code (CTOM), section 30 of which states that the applicable legislation is that of the place at which the contract is executed (*lex loci solutionis*). The Committee points out that the CTOM contains no maritime provisions and so does not make the distinction between the two sets of provisions applying to seafarers' contracts under section 4 of the CTM. It notes, however, that the CTOM takes precedence (section 30), and that its geographical scope extends to the antarctic territories and in part to the island of Mayotte.
>
> With regard to the legal status of contracts of seafarers on board ships registered in the TAAF, the Committee asks the Government to state whether, as indicated in the text of the *Provisional instructions concerning observance of the application to foreign seafarers of the conditions of employment in force on board vessels registered in the French Southern and Antarctic Territories*, these contracts are indeed maritime labour contracts, or ordinary labour contracts, and to indicate in which sectors, other than the maritime sector, economic activities are conducted in the TAAF.
>
> The Committee also notes that the magistrate's court of Saint-Denis, Réunion, has jurisdiction for individual labour disputes between shipowners and seafarers, for interpreting contracts, or annulling clauses of such contracts.
>
> With regard to the interpretation of contracts and the applicable law (French or foreign), the Committee notes the Standard Employment Contract Governing the Employment of all Filipino Seamen on Board Ocean-Going Vessels) established by the *Philippine Overseas Employment Administration* (POEA). It notes, inter alia, that section J (applicable law) states that the laws of the Philippines and international treaties ratified by the Philippines apply to all employment contracts of Filipino seamen. The Philippines has not ratified the Seamen's Articles of Agreement Convention, 1926 (No. 22). According to section I (Jurisdiction) of the above Standard Employment Contract, the POEA has original and exclusive jurisdiction over any disputes arising out of the contract.

The Committee notes from the Government's report that no individual or collective disputes concerning the application of this Convention have been registered. It requests the Government to state (i) the law which applies to the contract(s) of seafarers employed on vessels registered in the TAAF in the case of both contracts of French seafarers (or assimilated) and contracts of non-resident foreign seafarers hired under a service contract concluded with the shipowner and a company governed by foreign law, responsible for crew recruitment, and (ii) the venue for litigation from French and foreign seafarers employed on vessels registered in the TAAF.

The Committee recalls that, as regards the applicable labour law, when registration is transferred to the TAAF the contracts concluded by seafarers to work on ships previously registered in a port of metropolitan France, an overseas department or an overseas territory (other than the TAAF), are no longer governed by the CTM, but by the CTOM.

The Committee trusts that the Government will not fail to provide answers to these points.

Furthermore, in its comments, the French Democratic Confederation of Labour (CFDT) recalls its opposition to registration of commercial vessels in the TAAF, and wonders why the Overseas Labour Code should be applicable for merchant vessels which only call at ports in metropolitan France.

The Committee requests the Government to reply to these points.

Convention No. 25: Sickness Insurance (Agriculture), 1927

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 26: Minimum Wage-Fixing Machinery, 1928

A request regarding certain points is being addressed directly to the *United Kingdom* (Anguilla).

Convention No. 33: Minimum Age (Non-Industrial Employment), 1932

Requests regarding certain points are being addressed directly to the following States: *France* (French Polynesia and St. Pierre and Miquelon), *Netherlands* (Netherlands Antilles).

Convention No. 53: Officers' Competency Certificates, 1936

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 69: Certification of Ships' Cooks, 1946

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 73: Medical Examination (Seafarers), 1946

France

French Southern and Antarctic Territories

The Committee notes the information supplied in the Government's report.

1. *Statistics of seafarers' medical examinations.* In its previous comments, the Committee requested the Government to provide statistics of medical examinations conducted for French (and assimilated) seafarers as well as for foreign seafarers. On this point, the Committee notes that seafarers not residing in France may undergo or renew their periodical medical examinations with physicians in their place of residence which, according to the Government, is the usual practice.

The Committee notes, however, that no statistics are yet available for 1996 in regard to medical examinations for seafarers residing abroad. It hopes to receive these statistics very shortly and, meanwhile, would like to receive statistics from previous years.

2. *Seafarers' physical fitness examinations.* The Committee recalls the comments made by the French Democratic Confederation of Labour (CFDT) in 1995 and repeated in 1996, to the effect that, in most cases, a medical examination for seafarers employed on vessels registered in the TAAF is not carried out. On this point, the Committee requests the Government, once again, to supply information on the application in practice of the Convention.

3. *Medical certificate attesting to fitness for maritime navigation.* While noting the introduction in the future of a new medical certificate, the Committee wonders as to the practical application and supervision procedures concerning, according to the statistics supplied by the Government, two-thirds of the seafarers employed on TAAF-registered vessels who are not nationals of the European Union. Since the customary practice for this category of personnel is to undergo medical examination abroad — often in countries which have not ratified the Convention — the Committee requests the Government, once again, to state the criteria for the approval of doctors *registered* with the French consular authorities to conduct medical examinations for seafarers, and the means of supervising such examinations, in accordance with *Article 3 of the Convention*. The Committee would also like to know the distinction between a physician registered *(médecin déclaré)* with the French consular authorities and an accredited physician *(médecin habilité)* to conduct the examination.

[The Government is requested to supply a detailed report in 1998.]

Convention No. 81: Labour Inspection, 1947 [and Protocol, 1995]

Requests regarding certain points are being addressed directly to the *United Kingdom* (Gibraltar and Jersey).

Convention No. 82: Social Policy (Non-Metropolitan Territories), 1947

France

French Polynesia

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

The Committee notes that, at its 265th Session (March 1996), the Governing Body adopted the report of the Committee set up to examine the representation made by the World Federation of Trade Unions (WFTU) under article 24 of the ILO Constitution, alleging non-observance by France of the Labour Inspection Convention, 1947 (No. 81) and the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82). The allegations concerned the content and application of regulations on the training, certification and safety prescriptions (diving schedules) that are applicable to underwater divers employed on pearl farms, which were adopted by the authorities of French Polynesia in 1987. In its representation, the WFTU considered that, in view of the number of permanent disabilities or deaths among divers, these regulations were inadequate and deficient. In addition, they were discriminatory in that they barred divers trained in French Polynesia from access to employment in companies coming under the regulations of metropolitan France.

In accordance with the recommendations set out in the above-mentioned report, the Government is asked to take all appropriate measures to ensure that the territorial regulation, the need for whose revision has been recognized, is brought into conformity with the requirements of Convention No. 82, inter alia by eliminating provisions that can result in indirect discrimination and by aligning training strictly with the requirements of professional diving. The Government is also asked to provide, in its reports on the application of the Convention, detailed information on the adoption of the laws and regulations to which it referred during the above procedure, in order to ensure the health and safety of professional divers in the territory of French Polynesia.

The Committee asks the Government to make every effort to take the necessary action in the very near future.

Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948

Requests regarding certain points are being addressed directly to the *Netherlands* (Aruba and the Netherlands Antilles).

Convention No. 92: Accommodation of Crews (Revised), 1949

Requests regarding certain points are being addressed directly to the following States: *Denmark* (Faeroe Islands), *France* (French Guiana, Guadeloupe, Martinique and Réunion).

Convention No. 94: Labour Clauses (Public Contracts), 1949

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 95: Protection of Wages, 1949

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 98: Right to Organise and Collective Bargaining, 1949

France

French Southern and Antarctic Territories

The Committee notes the Government's report.

The Committee recalls that the National Federation of Seafarers' Unions (FNSM) and the General Confederation of Labour (CGT) submitted observations concerning the situation of seafarers engaged on board vessels registered in the French Southern and Antarctic Territories (TAAF). In particular, these organizations considered that the terms of employment in regard to foreign seafarers were discriminatory. They also underlined the lack of collective agreements and negotiations for vessels registered in the TAAF.

The Committee notes that, according to the Government, the social partners are free to enter into collective bargaining on employment conditions on board vessels registered with the TAAF. Consequently, the lack of collective agreements relating to employment conditions aboard these vessels could not be attributed to the Government. The Government indicates, however, that in the majority of cases recruitment companies are bound by local collective agreements concluded with trade unions of seafarers. According to the Government, nothing in the Overseas Labour Code precludes the conclusion of such agreements covering either all seconded crews (namely, French seafarers) or only the crews recruited directly.

In the light of those facts, the Committee notes that the Merchant Navy Ministry has undertaken to renew its instructions on the supervision of employment conditions in force on board vessels registered with the TAAF and to ensure entry into force of a model inspection report, accompanied by an inspection handbook. The Committee would be grateful if the Government would supply the text of the new instructions along with the model report and handbook.

Recalling that by ratifying the Convention the State has undertaken to encourage and promote the development and use of voluntary bargaining machinery with a view to settling the employment conditions of seafarers, the Committee requests the Government to take measures to this effect and to supply information on the matter. In particular, the Committee would request the Government to supply practical indications on the collective agreements in force, to indicate the signatories, the topics covered and the number of seafarers concerned. It also requests the Government to indicate in what way seafarers can obtain compliance with these agreements, if necessary.

United Kingdom

Isle of Man

The Committee notes the Government's report, including the Employment (Amendment) Act, 1996 attached thereto.

1. With reference to its previous comments, the Committee notes with satisfaction the entry into force of the Employment (Amendment) Act on 1 January 1997, the provisions of which deem it unlawful to refuse to employ a person or refuse services of an employment agency on the grounds of trade union membership.

2. The Committee is adddressing a direct request to the Government concerning another point.

* * *

In addition, requests regarding certain points are being addressed directly to the *United Kingdom* (Guernsey and Isle of Man).

Convention No. 99: Minimum Wage Fixing Machinery (Agriculture), 1951

A request regarding certain points is being addressed directly to the *United Kingdom* (Anguilla).

Convention No. 100: Equal Remuneration, 1951

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 101: Holidays with Pay (Agriculture), 1952

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 111: Discrimination (Employment and Occupation), 1958

France

Martinique

1. The Committee notes the comments sent by the Martinique Central Organization of Democratic Workers of the National Employment Agency (CDMT-ANPE) concerning implementation of the Convention in Martinique, which was communicated for appropriate comment to the Government of France. The Committee notes that the CDMT-ANPE raises general objections to the difference between the unemployment rate in Martinique (30 per cent) and in metropolitan France (12 per cent) and considers that the persistent and massive structural unemployment in Martinique is an illustration of the discriminatory treatment suffered by workers in Martinique, both active and unemployed. The CDMT-ANPE also asserts that the two point increase in value added tax (VAT) to finance Act No. 94-638 of 25 July 1994 on employment and integration in Overseas Departments (DOM) amounts to discrimination against taxpayers in Martinique, whether they are workers, unemployed or socially marginalized.

2. The Committee recalls that under the terms of the Convention not all distinctions, exclusions or preferences are contrary to the Convention. Under *Article 1, paragraph 1(a)*, the only distinctions, exclusions or preferences which are unlawful are those based on race, colour, sex, religion, political opinion, national extraction or social origin, which have the effect of nullifying or impairing equality of opportunity or treatment in employment and occupation and, under *Article 1, paragraph 1(b)*, such other distinction, exclusion or preference as may be determined by the member State concerned, after consultation with representative employers' and workers' organizations. With regard to Martinique, France has not made such a determination.

3. Since the allegations of the CDMT-ANPE refer to no discriminatory practice based on the seven criteria set out in the Convention, the Committee considers that it need not pursue these comments on the application of the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *France* (French Polynesia and French Southern and Antarctic Territories), *New Zealand* (Tokelau).

Convention No. 115: Radiation Protection, 1960

Requests regarding certain points are being addressed directly to the following States: *France* (French Polynesia), *United Kingdom* (Bermuda, Guernsey and Jersey).

Convention No. 120: Hygiene (Commerce and Offices), 1964

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 122: Employment Policy, 1964

Requests regarding certain points are being addressed directly to the following States: *Australia* (Norfolk Island), *Denmark* (Greenland), *Netherlands* (Aruba), *United Kingdom* (Guernsey and Isle of Man).

Convention No. 123: Minimum Age (Underground Work), 1965

Requests regarding certain points are being addressed directly to *France* (French Guiana, Réunion and St. Pierre and Miquelon).

Convention No. 129: Labour Inspection (Agriculture), 1969

A request regarding certain points is being addressed directly to *France* (French Polynesia).

Convention No. 131: Minimum Wage Fixing, 1970

A request regarding certain points is being addressed directly to *France* (Guadeloupe).

Convention No. 135: Workers' Representatives, 1971

In addition, requests regarding certain points are being addressed directly to *Netherlands* (Aruba) and the *United Kingdom* (Gibraltar).

Convention No. 136: Benzene, 1971

Requests regarding certain points are being addressed directly to *France* (French Polynesia and Martinique).

Convention No. 137: Dock Work, 1973

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 138: Minimum Age, 1973

A request regarding certain points is being addressed directly to *Netherlands* (Aruba).

Convention No. 141: Rural Workers' Organisations, 1975

Information supplied by *France* (New Caledonia) in answer to a direct request has been noted by the Committee.

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976

Netherlands

Aruba

The Committee notes the Government's report and the information supplied in reply to its previous observation. It notes that the reorganization of the Department of Labour should be completed by the end of 1997. It also notes that the ILO Matters Tripartite Committee, instituted in 1991, met several times in 1995 and the first quarter of 1997 to discuss matters including those set out in *Article 5, paragraph 1, of the Convention*. The Committee hopes that in future such consultations will be held on all the matters set out in this Article and that the Government will not fail to mention them in its future reports. In this respect, the Committee has been informed of the declarations by the Netherlands that ILO Conventions Nos. 129 and 141 cease to be applicable to Aruba. It requests the Government to indicate whether the representative organizations of employers and workers were consulted on these denunciations and whether discussions were held on this matter in the Tripartite Committee. If so, please supply complete information on these consultations.

The Committee notes the Government's desire to produce an annual report on the operation of the procedures set out in the Convention and requests it to indicate whether the representative organizations have been consulted in accordance with *Article 6*. It hopes that such a report will be produced shortly and requests the Government to send a copy of it to the ILO.

* * *

In addition, requests regarding certain points are being addressed directly to *France* (French Polynesia and New Caledonia).

Convention No. 145: Continuity of Employment (Seafarers), 1976

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 146: Seafarers' Annual Leave with Pay, 1976

Requests regarding certain points are being addressed directly to the following States: *France* (Guadeloupe, French Polynesia, French Southern and Antarctic Territories, Martinique, Réunion and St. Pierre and Miquelon), *Netherlands* (Aruba).

Convention No. 149: Nursing Personnel, 1977

France

Guadeloupe

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation concerning the following points:

> With reference to its previous comments, the Committee notes with regret that for many years the Government has not supplied a report on application of the Convention. In its last communication, it indicated that matters pertaining to nursing personnel did not fall within the competence of the Departmental Directorate of Labour, Employment and Occupational Training of Basse-Terre.
>
> The Committee recalls the obligation devolving on member States, pursuant to *article 22 of the ILO Constitution*, to present periodically a report on application of ratified Conventions, in accordance with the report form approved by the Governing Body. It hopes that in future the Government will not fail to meet its constitutional obligation to provide the report due on application of the present Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 160: Labour Statistics, 1985

Requests regarding certain points are being addressed directly to the following States: *Australia* (Norfolk Island), *United Kingdom* (Isle of Man).

Appendix. Table of reports received on ratified Conventions (non-metropolitan territories) as at 12 December 1997

(articles 22 and 35 of the Constitution)

Article 22 of the Constitution of the International Labour Organization provides that "each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request". Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th (November 1977) Session, the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 22 and 35 of the Constitution:

(a) the practice of tabular classification of reports, without summary of their contents, which has been followed for several years in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;

(b) the Director-General should make available, for consultation at the Conference, the original texts of all reports received on ratified Conventions; in addition, photocopies of the reports should be supplied on request to members of delegations.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification.

Reports received under articles 22 and 35 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations. First reports appear in ***bold italics***; all other reports appear in ordinary print.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
		Australia			
Norfolk Island	8	***3***, ***12***, ***19***, 29, 105, 112, 142, 160	2	***17***, 98	10
Total	8		2		10
		Denmark			
Faeroe Islands	0		8	7, 9, 16, 87, 92, 98, 105, 126	8
Greenland	0		4	7, 105, 122, 126	4
Total	0		12		12

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
France					
French Guiana	18	3, 9, 58, 68, 81, 92, 98, 105, 111, 112, 120, 126, 131, 133, 135, 141, 144, 146	0		18
French Polynesia	8	10, 33, 81, 98, 105, 111, 122, 144	24	3, 9, 13, 16, 19, 29, 44, 53, 58, 69, 73, 82, 87, 100, 115, 120, 123, 125, 126, 129, 131, 141, 145, 146	32
French Southern and Antarctic Territories	11	8, 9, 22, 58, 68, 73, 92, 98, 111, 133, 146	0		11
Guadeloupe	2	9, 68	17	3, 58, 81, 92, 98, 105, 111, 112, 120, 126, 131, 133, 135, 141, 144, 146, 149	19
Martinique	19	3, 9, 10, 19, 29, 62, 68, 81, 87, 98, 105, 111, 120, 131, 135, 136, 141, 144, 149	7	58, 92, 112, 123, 126, 133, 146	26
New Caledonia	13	3, 9, 58, 81, 98, 105, 111, 120, 126, 131, 141, 144, 146	0		13
Reunion	26	3, 9, 10, 19, 29, 58, 62, 68, 81, 87, 92, 94, 98, 105, 111, 112, 120, 123, 126, 131, 133, 135, 141, 144, 146, 149	0		26
St. Pierre and Miquelon	20	3, 9, 10, 19, 29, 33, 44, 58, 81, 87, 98, 105, 120, 122, 123, 126, 131, 141, 144, 146	1	111	21
Total	117		49		166
Netherlands					
Aruba	14	14, 22, 23, 25, 29, 81, 105, 106, 113, 118, 126, 131, 141, 144	17	8, 9, 11, 17, 69, 74, 87, 94, 95, 101, 122, 129, 135, 137, 138, 145, 146	31
Netherlands Antilles	13	3, 10, 29, 33, 58, 69, 74, 81, 87, 105, 106, 118, 122	0		13
Total	27		17		44
New Zealand					
Tokelau	2	105, 111	0		2
Total	2		0		2
United Kingdom					
Anguilla	5	26, 58, 98, 99, 105	0		5
Bermuda	5	58, 98, 105, 133, 135	0		5
British Virgin Islands	4	26, 58, 98, 105	0		4

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Falkland Islands (Malvinas)	4	58, 98, 105, 141	0		4
Gibraltar	6	58, 81, 98, 105, 133, 135	0		6
Guernsey	6	7, 81, 98, 105, 135, 141	0		6
Isle of Man	9	7, 68, 81, 92, 98, 99, 105, 126, 160	0		9
Jersey	5	7, 81, 98, 99, 105	0		5
Montserrat	4	26, 58, 98, 105	0		4
St. Helena	3	58, 98, 105	0		3
Total	51		0		51
United States					
American Samoa	2	58, 144	0		2
Guam	2	58, 144	0		2
Northern Mariana Islands	1	144	0		1
Puerto Rico	2	58, 144	0		2
United States Virgin Islands	2	58, 144	0		2
Total	9		0		9
Grand total					
Grand total	**214**		**80**		**294**

Note: The numbers in ***bold italics*** correspond to first reports due from governments after ratification.

III. Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference

(article 19 of the Constitution)

Afghanistan

The Committee notes with regret that the Government has not replied to its previous observation. It hopes that the Government will shortly provide the information required under the Memorandum adopted by the Governing Body *(points I, II and III of the questionnaire)*, concerning the Conventions and Recommendations adopted at the 71st, 72nd, 74th, 75th and 76th Sessions of the Conference, which have already been submitted to the governmental bodies concerned. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th, 79th, 80th, 81st, 82nd and 83rd Sessions have been submitted.

Albania

The Committee notes with regret that the Government has not replied to its previous observation. It hopes that the Government will indicate shortly that the instruments adopted at the 78th, 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Antigua and Barbuda

The Committee notes with satisfaction the information supplied by the Government to the effect that the instruments adopted at the 68th to 81st Sessions of the Conference have been submitted to the competent authorities. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 82nd and 83rd Sessions have been submitted.

Armenia

The Committee observes that the Government has not responded to its previous observation. It hopes that the Government will indicate soon that the instruments adopted at the 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Bahamas

The Committee notes with satisfaction the information supplied by the Government to the effect that the instruments adopted by the Conference at its 74th, 75th, 76th, 78th, 79th, 80th, 81st and 82nd Sessions have been submitted to the competent authorities. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 83rd Session of the Conference have been submitted.

Bangladesh

In the absence of a reply to its previous direct request, the Committee hopes that the Government will soon be able to indicate whether the instruments adopted at the 77th (Convention No. 170 and Recommendation No. 177), 78th, 79th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Belgium

With reference to its previous comments, the Committee notes the information provided by the Government according to which the submission of Convention No. 169 (76th Session) adopted at the 78th Session, 79th Session, and at the 81st Session of the Conference is in progress. The Committee would be grateful if the Government would indicate whether the instruments mentioned as well as those adopted at the 82nd and 83rd Sessions of the Conference have been submitted.

Belize

The Committee notes with regret that the Government has not replied to its previous observations. It hopes that the Government will indicate shortly that the instruments adopted at the 77th to 79th Sessions of the Conference have been submitted to the National Assembly, which has the power to legislate by virtue of articles 62 and 69 of the Constitution, and that the Government will supply the information and documents requested in the memorandum adopted by the Governing Body. The Committee would also be grateful if the Government would indicate whether the instruments adopted at the 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted.

Bolivia

The Committee notes that the Government has not replied to its previous direct request. It hopes that it will shortly indicate that the instruments adopted at the 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Bosnia and Herzegovina

The Committee notes that the Government has not replied to its previous direct requests and hopes that it will indicate shortly that the instruments adopted at the 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Brazil

With reference to its previous observation, the Committee notes the information supplied by the Government to the effect that a tripartite commission has been established to analyse the texts of the instruments adopted by the International Labour Conference at its 83rd Session. It trusts that the Government will submit to the Congress Conventions Nos. 128-130, 149-151, 156 and 157, together with the instruments adopted at the 52nd, 78th, 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference.

Bulgaria

The Committee notes with regret that the Government has not replied to its previous observations. It hopes that the Government will soon supply information on the instruments adopted at the 79th, 80th and 81st Sessions of the Conference of which the National Assembly has taken note. It would be grateful if the Government would indicate whether the above-mentioned instruments have been submitted to the competent authorities and also hopes that the Government will shortly supply the information requested in the memorandum adopted by the Governing Body *(point II(a) and (b) of the questionnaire)*.

In addition, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 82nd and 83rd Sessions have been submitted.

Cambodia

With reference to its previous observation, the Committee notes the information supplied by the Government to the effect that the instruments adopted at the 82nd Session of the Conference have been submitted to the Council of Ministers. It hopes that the Government will soon supply information concerning the submission to the competent authorities of the instruments adopted by the Conference at the 82nd and 83rd Sessions.

Cameroon

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will indicate shortly that the instruments adopted at the 69th, 70th, 71st, 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted. In addition, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 83rd Session of the Conference have been submitted.

Central African Republic

With reference to its previous observation, the Committee notes the information supplied by the Government to the effect that it has already initiated the procedure for submission to the competent authorities of certain instruments adopted at the 65th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th and 81st Sessions of the Conference. It also notes that the instruments adopted at the 83rd Session of the Conference have been submitted to the competent authorities. It hopes that the Government will indicate shortly that the instruments adopted at the 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities and that it will supply the information and documents requested in the Memorandum adopted by the Governing Body *(points I, II and III of the questionnaire)* in regard to these instruments as well as for those adopted at the 65th, 69th, 70th, 71st, 72nd and 74th Sessions which have already been submitted.

Chile

The Committee regrets to observe that the Government has not responded to its previous observations. The Committee trusts that the Government will indicate soon that the instruments adopted at the 75th Session have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 78th Session, on which a government decision is pending, have been submitted to the competent authorities. In addition, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 79th, 80th, 81st, 82nd and 83rd Sessions have been submitted.

Comoros

Referring to its previous observation, the Committee notes the information supplied by the Government concerning the reasons for the delay in the submission of the instruments adopted at the 79th, 80th, 81st and subsequent sessions of the Conference. It hopes that the Government will soon indicate that the instruments adopted at the 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Congo

Further to its previous observation, the Committee notes the information supplied by the Government during the 1997 International Labour Conference to the effect that the instruments adopted at the 58th (Convention No. 137), 60th (Convention No. 142), 61st (Convention No. 144), 63rd (Convention No. 148), 67th (Convention No. 156), 68th (Convention No. 158), 71st (Conventions Nos. 160 and 161), 75th (Conventions Nos. 167 and 168) and 76th (Convention No. 169) Sessions of the International Labour Conference have been submitted to the competent authority. The Committee trusts that the Government will indicate in the near future that the instruments adopted at the 54th (Recommenations Nos. 135 and 136), 55th (Recommendations Nos. 137, 138, 139, 140, 141 and 142), 58th (Convention No. 137 and Recommendation No. 145), 60th (Conventions Nos. 141 and 143, Recommendations Nos. 149, 150 and 151), 61st (Recommendation No. 152), 62nd, 63rd (Recommendation No. 156), 67th (Recommendations Nos. 163, 164 and 165), 68th (Convention No. 157 and Recommendations Nos. 167 and 168), 69th, 70th, 71st (Recommendations Nos. 170 and 171), 72nd, 74th, 75th (Recommendations Nos. 175 and 176), 77th, 78th, 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Costa Rica

With reference to its previous observation, the Committee has noted the information communicated by the Government according to which the instruments adopted at the 75th Session (Convention No. 167), 78th Session (Recommendation No. 179), 79th Session (Recommendation No. 180), 80th Session and 81st Session (Recommendation No. 182), 82nd Session (1995 Protocol relating to Convention No. 81 and Recommendation No. 183) and 83rd Session of the Conference have been submitted to the Higher Labour Council. The Committee would be grateful if the Government would indicate whether these instruments have been submitted to the competent authority.

Democratic Republic of the Congo

With reference to its previous observation, the Committee notes with satisfaction the information supplied by the Government to the effect that the instruments adopted at the 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authority. It would be grateful if the Government would indicate whether the instruments adopted at the 83rd Session of the Conference have been submitted to the competent authorities.

Djibouti

Referring to its previous observation, the Committee noted the information provided by the Government according to which the instruments adopted at the 83rd Session of the Conference have been submitted to the competent authorities. It trusts that the Government will indicate soon that the instruments adopted at the 66th, 68th, 69th, 70th, 74th, 75th, 76th and 77th Sessions of the Conference have been submitted to the competent authorities and that it will provide, both for these instruments and for those adopted at the 71st and 72nd Sessions, the information and documents requested in the Memorandum adopted by the Governing Body. In addition, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted.

Ecuador

With reference to its previous observation, the Committee notes the information supplied by the Government concerning the reasons for the delay in submission to the competent authorities of the instruments adopted by the Conference. It hopes that it will indicate shortly that the Conventions adopted at the 75th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions, as well as the instruments adopted at the 83rd Session of the Conference, have been submitted to Congress.

The Committee recalls that submission is an obligation applying to Conventions as well as Recommendations and not implying that governments are under an obligation to ratify the Conventions or accept the Recommendations in question. Governments have complete freedom as to the content of the proposals made when submitting Conventions and Recommendations to the competent authorities.

El Salvador

The Committee notes the information provided by the Government according to which the instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

The Committee hopes that the Government will indicate soon that the instruments adopted at the 62nd, 65th, 66th, 67th, 68th, 70th and 82nd Sessions of the Conference, together with the remaining instruments from the 63rd Session (Convention No. 148 and Recommendations Nos. 156 and 157), 64th Session (Convention No. 151 and Recommendations Nos. 158 and 159) and 69th Session (Recommendation No. 167) have been submitted to the competent authorities.

Equatorial Guinea

The Committee notes with regret that the Government has not replied to its previous direct requests. It hopes that the Government will indicate shortly that the instruments adopted at the 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Eritrea

The Committee observes that the Government has not responded to its previous direct requests. It hopes that it will indicate soon that the instruments adopted at the 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Gabon

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will indicate shortly that the instruments adopted at the 74th, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Georgia

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will indicate shortly that the instruments adopted at the 80th, 81st, 82nd and 83rd Sessions of the Conference of the Conference have been submitted to the competent authorities.

Ghana

The Committee notes with regret that the Government has not replied to its previous direct requests and hopes that the instruments adopted at the 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Grenada

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will indicate shortly that the instruments adopted at the 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Guatemala

Further to its earlier observation, the Committee has noted the statement made by a Government representative to the Conference Committee on the Application of Standards in 1997 concerning the reasons for the delay in submitting to the competent authorities certain instruments adopted by the Conference which, with the ILO's technical assistance, hopes to overcome the situation. The Committee has also noted the information provided by the Government according to which the instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority. It hopes that the Government will indicate soon that the instruments adopted at the 74th Session (Maritime), the remaining instruments adopted at the 75th Session of the Conference (Convention No. 168 and Recommendation No. 176), and the instruments adopted at the 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities. In this respect, the Committee wishes to recall that the obligation to submit the instruments adopted by the Conference to the competent authorities, as provided for in the ILO Constitution, applies to all Conventions and Recommendations without exception. Governments have full freedom as to the content of the proposals they make concerning the Conventions and Recommendations which are submitted to the competent authorities. The Committee therefore hopes that the Government will be able to indicate soon that the instruments in question have been submitted to Congress.

Guinea

The Committee notes with regret that the Government has not replied to its previous observations. It hopes that the Government will supply shortly the information requested in the Memorandum adopted by the Governing Body *(points II(b) and III of the questionnaire)* in regard to the instruments adopted at the 68th to 75th Sessions of the Conference which have been submitted to the competent authorities. In addition, it would be grateful if the Government would indicate whether the instruments adopted at the 76th, 77th, 78th, 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted.

Guinea-Bissau

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will indicate shortly that the instruments adopted at the 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Haiti

The Committee observes that the Government has not responded to its previous observation. It hopes that the Government will indicate soon that the instruments remaining from the 67th Session (Conventions Nos. 154 and 155 and Recommendations Nos. 163 and 164), the instruments adopted at the 68th Session, the remaining instruments adopted at the 75th Session (Convention No. 168 and Recommendations Nos. 175 and 176), together with all the instruments adopted at the 76th, 77th, 78th, 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference, have been submitted to the competent authorities.

Honduras

The Committee regrets to observe that the Government has not responded to its previous observation. It hopes that with regard to the instruments adopted at the 69th, 71st and 72nd Sessions of the Conference which have already been submitted, the Government will provide soon the information requested in the Memorandum adopted by the Governing Body *(points II(b) and (c), and III of the questionnaire)*, together with a copy of the submission document for the instruments adopted at the 75th Session. It also requests the Government to provide a copy of the letter by means of which the instruments adopted at the 67th Session have been submitted to the National Assembly by the President of the Republic, and of the letter by means of which the Ministry of Foreign Affairs submitted to the Assembly the instrument adopted at the 70th Session, and to specify whether the other instruments adopted at the 74th Session and the instruments adopted at the 76th, 77th and 78th Sessions have been submitted. Similarly, it requests the Government to indicate whether it has submitted the instruments adopted at the 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference.

Hungary

Referring to its previous observation, the Committee noted with satisfaction the information provided by the Government during the 1997 International Labour Conference, according to which the instruments adopted at the 76th, 77th, 78th, 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to Parliament.

India

The Committee observes that the Government has not responded to its previous observation. It hopes that it will indicate soon that the instruments adopted at the 78th, 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Ireland

The Committee observes that the Government has not responded to its previous direct requests. It hopes that it will indicate soon that the instruments adopted at the 72nd, 76th, 78th, 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Kazakhstan

The Committee observes that the Government has not responded to its previous observation. It hopes that the Government will indicate soon that the instruments adopted at the 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Kenya

The Committee observes that the Government has not responded to its previous direct requests. It hopes that it will indicate soon that the instruments adopted at the 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Kyrgyzstan

In the absence of a reply to its previous direct request, the Committee requests the Government to indicate whether the instruments adopted at the 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities and to supply the information on this matter requested in the Memorandum adopted by the Governing Body.

Lebanon

With reference to its previous comments, the Committee notes the information supplied by the Government concerning instruments adopted from the 31st to the 50th and 83rd Sessions of the Conference will be submitted to the competent authorities. The Committee hopes that the Government will indicate shortly that the above-mentioned instruments have been submitted to the competent authorities.

Liberia

The Committee notes that the Government has not replied to its previous direct requests and hopes that it will indicate shortly that the instruments adopted at the 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities. In addition, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 83rd session have been submitted.

Libyan Arab Jamahiriya

With reference to its previous observation, the Committee notes with satisfaction the information provided by the Government according to which the instruments adopted at the 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities. It requests the Government to indicate whether the instruments adopted at the 83rd Session of the Conference have been submitted.

Lithuania

The Committee observes that the Government has not responded to its previous observation. It hopes that the Government will indicate soon that the instruments adopted at the 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Madagascar

Referring to its previous observation, the Committee noted the statement made by a Government representative to the 1997 Conference Committee on the Application of Standards concerning the submission. It trusts that the Government will provide soon some indication of the proposals formulated at the time the instruments adopted at the 69th Session of the Conference were submitted, and that it will indicate that the instruments adopted at the 55th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions have been submitted to the competent authorities. In addition, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 83rd Session of the Conference have been submitted.

Mali

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will indicate shortly that the instruments adopted at the 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Mauritania

Referring to its previous observation, the Committee notes the information provided by the Government according to which the technical analysis of the instruments adopted at the 81st, 82nd and 83rd Sessions is currently being prepared and the instruments will be submitted soon to the National Assembly. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 81st, 82nd and 83rd Sessions of the Conference have been submitted.

Mauritius

Referring to its previous observation, the Committee notes the information provided by the Government according to which the instruments adopted at the 69th Session (Recommendation No. 167) and 82nd Session of the Conference have been submitted to the competent authority. It hopes that the Government will indicate soon that the instruments adopted at the 63rd Session (Convention No. 149 and Recommendation No. 157), 65th Session (Convention No. 152 and Recommendation No. 160), 66th and 83rd Sessions of the Conference have been submitted.

Mongolia

The Committee notes that the Government has not replied to its previous comments. It would be grateful if the Government would indicate whether the instruments adopted at the 82nd and 83rd Sessions of the Conference have been submitted.

Morocco

The Committee regrets to observe that the Government has not responded to its previous observations. It hopes that, in relation to the instruments adopted at the 74th, 75th, 76th and 79th Sessions of the Conference which were submitted to the competent authorities, the Government will provide soon the information (date of submission) requested under *point II(a) of the questionnaire* appearing at the end of the Memorandum adopted by the Governing Body. It would be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Mozambique

Referring to its previous observation, the Committee noted with interest the information provided by the Government according to which the instruments adopted at the 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authority. In addition, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 83rd Session of the Conference have been submitted.

Papua New Guinea

The Committee notes the information supplied by the Government to the effect that all submission to the National Parliament must go through the National Executive Council (NEC) which is a body made up of all government ministers for their consideration and endorsement. This submission included all the instruments adopted at the International Labour Conference since the 66th Session in 1980 to the 84th Session in 1996. Due to the existing system which involves lengthy periods of time (more than 12 to 18 months' period) for all the process needed to submit to the National Parliament (the most competent authority) for enactment of legislation, the department instead makes initial submission to NEC for information, examination, intentions, and for noting only as a first stage which can and is done within the prescribed date limits. This submission is then followed with another submission to the National Parliament for enactment of legislation, or other actions as desired.

The Committee hopes that the Government will shortly be able to indicate that the instruments adopted from the 66th to the 83rd Sessions of the Conference have been submitted to the National Parliament.

Paraguay

With reference to its previous observation, the Committee notes with satisfaction the information supplied by the Government in its report to the effect that the instruments adopted at the 68th and 69th Sessions (Recommendation No. 167) and at the 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to the National Parliament. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 82nd and 83rd Sessions have been submitted to the competent authorities.

Saint Lucia

The Committee regrets to note that once again the Government has not replied this year to the observations it has been making since 1990. The Committee trusts that the Government will shortly indicate that the instruments adopted at the 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th and 76th Sessions of the Conference have been submitted to the competent authorities and that it will supply the information and documents requested in this connection in the Memorandum adopted by the Governing Body, particularly with regard to the nature of the competent authorities and the Government's proposals or comments regarding the instruments in question *(points I(a) and II(b) of the questionnaire)*. In addition, it would be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th, 79th, 80th, 81st, 82nd and 83rd Sessions have been submitted. The Committee recalls in this connection that the authorities to which these instruments must be submitted are those empowered to legislate and that governments have full freedom as to the content of the proposals they make concerning the Conventions and Recommendations which are submitted to the competent authorities.

Sao Tome and Principe

The Committee regrets to note that once again this year the Government has not replied to the observations which have been made since 1992. The Committee trusts that the Government will indicate shortly that the instruments adopted at the 77th, 78th, 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Senegal

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will indicate shortly that the instruments adopted at the 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Seychelles

Further to its previous observation, the Committee notes the statement made by a government representative to the Conference Committee on the Application of Standards in 1997 concerning the reasons for delay in submission to the competent authorities of the instruments adopted by the Conference at its 63rd to 82nd Sessions. The Committee expresses strongly the hope that the Government will indicate shortly that the instruments adopted at the 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities in accordance with article 19, paragraphs 5(b) and 6(b), of the ILO Constitution. It recalls in this connection that the authorities to which the instruments must be submitted are those empowered to legislate, the People's Assembly in this case. It also recalls that the obligation to submit does not imply that Governments have to propose the ratification of the Conventions or the acceptance of the Recommendations in question. Governments have full freedom as to the content of the proposals they make concerning the Conventions and Recommendations which are submitted to the competent authorities; they may also request technical assistance from the ILO in areas where they encounter difficulties.

Sierra Leone

The Committee regrets to observe that the Government has not responded to its previous observations. It hopes that it will indicate soon that the instruments adopted at the 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference, together with Convention No. 146 and Recommendation No. 154 adopted at the 62nd Session, have been submitted to the competent authorities.

Solomon Islands

The Committee notes with regret that once again, this year, the Government has not replied to the observations it has been making since 1992. It hopes that the Government will indicate very shortly whether proposals have been formulated for the instruments adopted at the 74th Session of the Conference which have already been submitted to the competent authorities and that it will specify the content of these proposals, as laid down in the memorandum adopted by the Governing Body *(point II(c) of the questionnaire)*. The Committee hopes that the Government will soon be in a position to announce that the instruments adopted at the 70th, 71st, 72nd, 75th, 76th, 77th, 78th, 79th, 80th, 81st, and 82nd Sessions have been submitted. In addition, it would be grateful if the Government would indicate whether the instruments adopted at the 83rd Session of the Conference have been submitted.

Sudan

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will indicate shortly that the instruments adopted at the 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Suriname

The Committee notes that the Government has not replied to its previous observation. It trusts that the Government will indicate soon that the instruments adopted at the 67th (Convention No. 154), 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authority.

Swaziland

With reference to its previous observations, the Committee notes the information supplied by the Government to the effect that the instruments adopted at the 78th, 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to Cabinet. It hopes that the Government will indicate soon that these instruments have been submitted to Parliament.

Syrian Arab Republic

With reference to its previous observation, the Committee notes the information supplied by the Government in its report to the effect that the remaining instruments adopted at the 69th (Recommendations Nos. 167 and 168), 77th (Conventions Nos. 170 and 171), 78th (Convention No. 172) and 79th Sessions (Convention No. 173), which have not yet been submitted to Parliament, and those adopted at the 70th, 80th and 81st Sessions of the Conference have been submitted to the Council of Ministers. It hopes that the Government will be able to indicate soon that the instruments adopted at the 66th, 70th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions and the remaining instruments adopted at the 69th Session of the Conference (Recommendations Nos. 167 and 168) have been submitted to Parliament.

The Committee notes that under article 50(1) of the 1973 Constitution of the Syrian Arab Republic "the People's Assembly exercises legislative power …", article 71, the People's Assembly is invested with the power to legislate and article 111(1) "the President of the Republic exercises legislative power outside sessions of the People's Assembly, subject to submission of all legislation he promulgates to the People's Assembly …".

It also notes that under article 115(1) of the Constitution "the Council of Ministers is the executive and higher administrative authority of the State … it supervises application of laws and regulations and controls the activities of state bodies and institutions".

The Committee recalls the conditions which submissions must fulfil, which are described in the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities: "(a) the competent authority is the authority which, under the Constitution of each State, has power to legislate or to take other action in order to implement Conventions and Recommendations; (b) the competent national authority shall normally be the legislature; (c) even when a legislative assembly exists, the executive or another body may be invested with power to legislate on certain subjects under constitutional provisions, or may exercise such powers by virtue of a general or special delegation granted by parliament. Sometimes the body concerned is itself a subordinate body of parliament. In such cases it would be desirable that Conventions and Recommendations should also be submitted to the legislative assembly itself in order to achieve the second objective of the submission, that of informing and mobilizing public opinion. Discussion in a deliberative assembly — or at least information of the assembly — can constitute an important factor in the complete examination of a question and in a possible improvement of measures taken at the national level; in the case of Conventions it might result in a decision to ratify; (d) in the case of instruments not requiring action in the form of legislation, it would be desirable — to ensure that the purpose of submission, which is also to bring Conventions and Recommendations to the knowledge of the public, is fully met — to submit these instruments also to the parliamentary body".

The Committee notes that the above-mentioned instruments were transmitted only to the Council of Ministers and therefore considers that these instruments have not been actually submitted to the competent authorities. It hopes that the Government will indicate soon whether the above-mentioned instruments have been submitted and will provide the information on this subject requested in the Memorandum adopted by the Governing Body *(points I and II of the questionnaire at the end of the Memorandum)*. The Committee would be grateful if the Government would indicate whether the instruments adopted at the 83rd Session of the Conference have been submitted.

United Republic of Tanzania

Further to its previous observation, the Committee notes the statement made by a government representative to the Conference Committee on the Application of Standards in 1997, that it is necessary to obtain additional technical and practical information in order to be able to submit the instruments adopted by the Conference to Parliament. The Ministry of Labour has received technical assistance from international labour standards specialists. The Government hopes that at the next session, scheduled for October 1997, the obligation for submission will be respected. The Committee hopes that the Government will shortly be able to announce that it has submitted to Parliament the instruments adopted at the 72nd, 74th, 75th and 76th Sessions of the Conference, together with the instruments adopted at the 66th, 67th and 68th Sessions which have been forwarded to the Ministry of Labour and Development. Lastly, it hopes that the Government will indicate the date on which the instruments adopted from the 54th to the 65th Sessions, and at the 69th, 70th and 71st Sessions, were submitted to the Assembly. It would be grateful if the Government would indicate whether the instruments adopted at the 77th, 78th, 79th, 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

The former Yugoslav Republic of Macedonia

With reference to its previous observation, the Committee notes the information supplied by the Government to the effect that the instruments adopted at the 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities. It hopes that the Government will indicate soon that the instruments adopted at the 83rd Session of the Conference have been submitted to the competent authorities.

Turkmenistan

The Committee observes that the Government has not responded to its previous direct requests. It hopes that the Government will indicate soon that the instruments adopted at the 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Uzbekistan

The Committee notes with regret that the Government has not replied to its previous direct requests. It hopes that the Government will indicate shortly that the instruments adopted at the 80th, 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authorities.

Venezuela

With reference to its previous observation, the Committee notes the information supplied by the Government concerning the submission to the competent authorities of some instruments adopted by the Conference. It hopes that the Government will announce that the remaining instruments adopted at the 71st (Convention No. 162), 74th (Conventions Nos. 163, 164, 165 and 166, and Recommendation No. 174), 75th, 76th, 77th, 78th (Convention No. 172), 79th, 80th, 81st, 82nd (Convention No. 176) and 83rd Sessions have been submitted to the competent authorities.

Yemen

The Committee notes with regret that the Government has not replied to its previous observations. It hopes that the Government will indicate shortly that the instruments adopted at the 74th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authorities. The Committee would also be grateful if the Government would indicate whether the instruments adopted at the 83rd Session have been submitted.

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In addition, requests regarding certain points are being addressed directly to the following States: ***Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Barbados, Belarus, Benin, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Chad, China, Colombia, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Estonia, Fiji, Finland, France, Gambia, Germany, Guyana, Indonesia, Islamic Republic of Iran, Iraq, Israel, Italy, Jamaica, Kuwait, Lao People's Democratic Republic, Latvia, Lesotho, Malawi, Malaysia, Malta, Mexico, Nepal, Netherlands, New Zealand, Niger, Nigeria, Pakistan, Panama, Rwanda, Saint Vincent and the Grenadines, San Marino, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Uganda, United Arab Emirates, United Kingdom, Uruguay, Viet Nam, Zambia, Zimbabwe.***

Appendix I. Information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities

(31st to 83rd Sessions of the International Labour Conference, 1948-96)[1]

Note. The number of the Convention or Recommendation is given in parentheses, preceded by the letter "C" or "R" as the case may be, when only some of the texts adopted at any one session have been submitted. Ratified Conventions are considered as having been submitted.

Account has been taken of the date of admission or readmission of States Members to the ILO for determining the sessions of the Conference whose texts are taken into consideration.

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Afghanistan	31 to 70	71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83
Albania	–	78, 79, 80, 81, 82 and 83
Algeria	47 to 82	83
Angola	61 to 79	80, 81, 82 and 83
Antigua and Barbuda	68 to 81	82 and 83
Argentina	31 to 81	82 and 83
Armenia	–	80, 81, 82 and 83
Australia	31 to 82	83
Austria	31 to 82	83
Azerbaijan	79 (C 173), 80 to 82	79 (R 180) and 83
Bahamas	61 to 82	83
Bahrain	63 to 83	–
Bangladesh	58 to 76, 77 (C 171; R 180) and 80	77 (C 170; R 177), 78, 79, 81, 82 and 83
Barbados	51 to 81	82 and 83
Belarus	37 to 83	–
Belgium	31 to 75, 77 and 80	76, 78, 79, 81, 82 and 83
Belize	68 to 76	77, 78, 79, 80, 81, 82 and 83
Benin	45 to 78	79, 80, 81, 82 and 83
Bolivia	31 to 79	80, 81, 82 and 83
Bosnia and Herzegovina	–	80, 81, 82 and 83
Botswana	64 to 82	83

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[1] The Conference did not adopt any Conventions or Recommendations at its 57th Session (June 1972) and 73rd Session (June 1987).

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Brazil	31 to 50, 51 (C 127; R 128, 129, 130, 131), 53 (R 133, 134), 54 to 62, 63 (C 148; R 156, 157), 64 (R 158, 159), 65, 66, 67 (C 154, 155; R 163, 164, 165), 68 (C 158; R 166), 69 to 77	51 (C 128), 52, 53 (C 129, 130), 63 (C 149), 64 (C 150, 151), 67 (C 156), 68 (C 157), 78, 79, 80, 81, 82 and 83
Bulgaria	31 to 78	79, 80, 81, 82 and 83
Burkina Faso	45 to 81	82 and 83
Burundi	47 to 81	82 and 83
Cambodia	53, 54 and 56	55, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83
Cameroon	44 to 68, 72 and 74	69, 70, 71, 75, 76, 77, 78, 79, 80, 81, 82 and 83
Canada	31 to 82	83
Cape Verde	65 to 81	82 and 83
Central African Republic	45 to 74 and 83	75, 76, 77, 78, 79, 80, 81 and 82
Chad	45 to 79	80, 81, 82 and 83
Chile	31 to 74, 76 and 77	75, 78, 79, 80, 81, 82 and 83
China	69 to 82	83
Colombia	31 to 70, 71 (C 160; R 170, 171), 72 (R 172), 74, 75 (C 167; R 175, 176), 76 to 78, 79 (R 180), 80 and 81 (C 175)	71 (C 161), 72 (C 162), 75 (C 168), 79 (C 173), 81 (R 182), 82 and 83
Comoros	65 to 78	79, 80, 81, 82 and 83
Congo	45 to 53, 54 (C 131, 132), 55 (C 133, 134), 56, 58 (C 138; R 146), 59, 60 (C 142), 61 (C 144), 63 (C 148, 149; R 157), 64 to 66, 67 (C 154, 155, 156), 68 (C 158), 71 (C 160, 161), 75 (C 167, 168) and 76	54 (R 135, 136), 55 (R 137, 138, 139, 140, 141, 142), 58 (C 137; R 145), 60 (C 141, 143; R 149, 150, 151), 61 (R 152), 62, 63 (R 156), 67 (C 156; R 163, 164, 165), 68 (C 157; R 167, 168), 69, 70, 71 (R 170, 171), 72, 74, 75 (R 175, 176), 77, 78, 79, 80, 81, 82 and 83
Costa Rica	31 to 74, 75 (C 166; R 175, 176), 76, 77, 78 (C 172), 79 (C 173), 81 (C 175) and 82 (C 176)	75 (C 167), 78 (R 179), 79 (R 180), 80, 81 (R 182), 82 (R 183; Protocol of 1995) and 83
Côte d'Ivoire	45 to 82	83
Croatia	–	80, 81, 82 and 83
Cuba	31 to 82	83
Cyprus	45 to 81	82 and 83
Czech Republic	80 to 83	–
Democratic Republic of the Congo	45 to 83	–

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Denmark	31 to 82	83
Djibouti	64, 65, 67, 71, 72 and 83	66, 68, 69, 70, 74, 75, 76, 77, 78, 79, 80, 81 and 82
Dominica	68 to 79	80, 81, 82 and 83
Dominican Republic	31 to 81, 82 (C 176) and 83 (C 177)	82 (R 183) and 83 (R 184)
Ecuador	31 to 74, 75 (R 175, 176), 76, 77 (R 177, 178), 78 (R 179), 79 (R 180), 80 (R 181), 81 (R 182) and 82 (R 183)	75 (C 167, 168), 77 (C 170, 171), 78 (C 172), 79 (C 173), 80 (C 174), 81 (C 175), 82 (C 176; Protocol of 1995) and 83
Egypt	31 to 83	–
El Salvador	31 to 61, 63 (C 149), 64 (C 150), 69 (C 159; R 168), 71 to 81, 83	62, 63 (C 148; R 156, 157), 64 (C 151; R 158, 159), 65, 66, 67, 68, 69 (R 167), 70 and 82
Equatorial Guinea	67 to 79	80, 81, 82 and 83
Eritrea	80	81, 82 and 83
Estonia	79 to 82	83
Ethiopia	31 to 83	–
Fiji	59 to 82	83
Finland	31 to 82	83
France	31 to 82	83
Gabon	45 to 72 and 75 to 81	74, 82 and 83
Gambia	–	82 and 83
Georgia	–	80, 81, 82 and 83
Germany	34 to 74, 75 (C 167; R 175), 76, 80 to 83	75 (C 168; R 176), 77, 78 and 79
Ghana	40 to 79	80, 81, 82 and 83
Greece	31 to 83	–
Grenada	66 to 80	81, 82 and 83
Guatemala	31 to 70, 71 (C 160, 161; R 171), 72, 75 (C 167; R 175), 76 and 83	71 (R 170), 74, 75 (C 168; R 176), 77, 78, 79, 80, 81 and 82
Guinea	43 to 75	76, 77, 78, 79, 80, 81, 82 and 83
Guinea-Bissau	63 to 78	79, 80, 81, 82 and 83
Guyana	50 to 81	82 and 83
Haiti	31 to 66, 67 (C 156; R 165), 69, 70 to 74 and 75 (C 167)	67 (C 154, 155; R 163, 164), 68, 75 (C 168; R 175, 176), 76, 77, 78, 79, 80, 81, 82 and 83
Honduras	39 to 66, 68, 69, 71, 72, 74 (C 164, 165, 166; R 174), 75 (C 167) and 76	67, 70, 74 (C 163; R 173), 75 (C 168; R 175, 176), 77, 78, 79, 80, 81, 82 and 83
Hungary	31 to 83	–

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Iceland	31 to 83	–
India	31 to 77	78, 79, 80, 81, 82 and 83
Indonesia	33 to 83	–
Islamic Republic of Iran	31 to 83	–
Iraq	31 to 82	83
Ireland	31 to 71, 74, 75 and 77	72, 76, 78, 79, 80, 81, 82 and 83
Israel	32 to 80	81, 82 and 83
Italy	31 to 82	83
Jamaica	47 to 83	–
Japan	35 to 83	–
Jordan	39 to 83	–
Kazakhstan	–	80, 81, 82 and 83
Kenya	48 to 80	81, 82 and 83
Republic of Korea	79 to 83	–
Kuwait	45 to 76, 78, 79, 80 (C 174) and 81 to 83	77 and 80 (R 181)
Kyrgyzstan	–	79, 80, 81, 82 and 83
Lao People's DemocratiC Republic	48 to 81	82 and 83
Latvia	80	79, 81, 82 and 83
Lebanon	31 (C 88, 89, 90; R 83), 32 (C 95, 98; R 85), 34 (C 100; R 90), 35 (C 102, 103), 40 (C 105, 106; R 103), 42 (C 111; R 111), 44 (C 115), 45 (C 116), 46 (C 117, 118), 47 (C 119), 48 (C 120, 121, 122; R 120, 122), 49 (C 123, 124), 50 (C 125, 126) and 51 to 82	31 (C 87), 32 (C 91, 92, 93, 94, 96, 97; R 84, 86, 87), 33, 34 (C 99; R 89, 91, 92), 35 (C 101; R 93, 94, 95), 36, 37, 38, 39, 40 (C 107; R 104), 41, 42 (C 110; R 110), 43, 44 (R 113, 114), 45 (R 115), 46 (R 116, 117), 47 (R 118, 119), 48 (R 121), 49 (R 123, 124, 125), 50 (R 126, 127) and 83
Lesotho	66 to 81	82 and 83
Liberia	31 to 75	76, 77, 78, 79, 80, 81, 82 and 83
Libyan Arab Jamahiriya	35 to 82	83
Lithuania	79	80, 81, 82 and 83
Luxembourg	31 to 83	–
Madagascar	45 to 54, 56 to 70	55, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83
Malawi	49 to 81	82 and 83
Malaysia	41 to 76, 82 and 83	77, 78, 79, 80 and 81
Mali	44 to 78	79, 80, 81, 82 and 83
Malta	49 to 82	83
Mauritania	45 to 80	81, 82 and 83

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Mauritius	53 to 62, 63 (C 148; R 156), 64, 65 (C 153; R 161), 67 to 82	63 (C 149; R 157), 65 (C 152; R 160), 66 and 83
Mexico	31 to 81	82 and 83
Republic of Moldova	79 and 80	81, 82 and 83
Mongolia	53 to 81	82 and 83
Morocco	39 to 76 and 79	77, 78, 80, 81, 82 and 83
Mozambique	61 to 82	83
Myanmar	31 to 83	–
Namibia	78 to 83	–
Nepal	51 to 81 and 83	82
Netherlands	31 to 81 and 82 (C 176; Protocol of 1995)	82 (R 183) and 83
New Zealand	31 to 82	83
Nicaragua	40 to 83	–
Niger	45 to 82	83
Nigeria	45 to 79, 81 and 82	80 and 83
Norway	31 to 83	–
Oman	81 to 83	–
Pakistan	31 to 80	81, 82 and 83
Panama	31 to 83	–
Papua New Guinea	61 to 65	66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83
Paraguay	40 to 81	82 and 83
Peru	31 to 83	–
Philippines	31 to 83	–
Poland	31 to 83	–
Portugal	31 to 83	–
Qatar	58 to 83	–
Romania	39 to 83	–
Russian Federation	37 to 83	–
Rwanda	47 to 79 and 81	80, 82 and 83
Saint Kitts and Nevis	–	82 and 83
Saint Lucia	–	66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83
Saint Vincent and the Grenadines	–	82 and 83
San Marino	69 to 83	–
Sao Tome and Principe	68 to 76	77, 78, 79, 80, 81, 82 and 83

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Saudi Arabia	61 to 83	–
Senegal	44 to 78	79, 80, 81, 82 and 83
Seychelles	–	63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83
Sierra Leone	45 to 62 (C 145, 147; R 153, 155)	62 (C 146; R 154), 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83
Singapore	50 to 83	–
Slovakia	79 to 83	–
Slovenia	79 to 83	–
Solomon Islands	74	70, 71, 72, 75, 76, 77, 78, 79, 80, 81, 82 and 83
Somalia	45 to 75	76, 77, 78, 79, 80, 81, 82 and 83
South Africa	81 and 82	83
Spain	39 to 62, 63 (C 148; R 156), 64 to 74, 75 (C 167; R 175), 76 to 79 and 82	63 (C 149; R 157), 75 (C 168; R 176), 80, 81 and 83
Sri Lanka	31 to 78	79, 80, 81, 82 and 83
Sudan	39 to 80	81, 82 and 83
Suriname	61 to 80	81, 82 and 83
Swaziland	60 to 77	78, 79, 80, 81, 82 and 83
Sweden	31 to 82	83
Switzerland	31 to 81	82 and 83
Syrian Arab Republic	31 to 65, 67 to 69 and 71 to 76	66, 70, 77, 78, 79, 80, 81, 82 and 83
Tajikistan	81 to 83	–
United RepubliC of Tanzania	46 to 65 and 69 to 71	66, 67, 68, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83
Thailand	31 to 82	83
The formeR Yugoslav RepubliC of Macedonia	80, 81 and 82	83
Togo	44 to 83	–
Trinidad and Tobago	47 to 83	–
Tunisia	39 to 83	–
Turkey	31 to 83	–
Turkmenistan	–	81, 82 and 83
Uganda	47 to 80	81, 82 and 83
Ukraine	37 to 83	–
United Arab Emirates	58 to 82	83
United Kingdom	31 to 82	83

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
United States	31 to 83	–
Uruguay	31 to 79 and 81	80, 82 and 83
Uzbekistan	–	80, 81, 82 and 83
Venezuela	31 to 70, 71 (C 160; R 170, 171), 72, 74 (R 173), 78 (R 179) and 82 (R 183)	71 (C 161), 74 (C 163, 164, 165, 166; R 174), 75, 76, 77, 78 (C 172), 79, 80, 81, 82 (C 176) and 83
Viet Nam	80 to 82	83
Yemen	49 to 72 and 75	74, 76, 77, 78, 79, 80, 81, 82 and 83
Yugoslavia	31 to 75	76, 77, 78, 79, 80, 81, 82 and 83
Zambia	49 to 82	83
Zimbabwe	66 to 79	80, 81, 82 and 83

Appendix II. Overall position of member States as at 12 December 1997

Sessions at which decisions were adopted	Number of States in which, according to information supplied by the Government:			Number of States which were Members of the Organization at the time of the session
	All the texts have been submitted	Some of these texts have been submitted	None of these texts have been submitted (including cases in which no information has been supplied by the Government)	
31 (June 1948)	58	2	–	60
32 (June 1949)	59	2	–	61
33 (June 1950)	61	–*	2	63
34 (June 1951)	62	2	–	64
35 (June 1952)	64	2	–	66
36 (June 1953)	64	–	2	66
37 (June 1954)	67	–*	2	69
38 (June 1955)	67	1	1	69
39 (June 1956)	74	–	2	76
40 (June 1957)	75	2	–	77
41 (April/May 1958)	77	1	1	79
42 (June 1958)	78	1	–	79
43 (June 1959)	78	1	1	80
44 (June 1960)	81	1	1	83
45 (June 1961)	99	2	–	101
46 (June 1962)	101	1	–	102
47 (June 1963)	107	1	–	108
48 (June/July 1964)	109	1	–	110
49 (June 1965)	113	1	–	114
50 (June 1966)	112	2	1	115
51 (June 1967)	117	–	–	117
52 (June 1968)	116	–*	2	118
53 (June 1969)	120	1	–	121
54 (June 1970)	118	1	2	121
55 (October 1970)	118	1	2	121
56 (June 1971)	121	–	–	121
58 (June 1973)	120	2	1	123
59 (June 1974)	123	1	1	125

Sessions at which decisions were adopted	Number of States in which, according to information supplied by the Government:			Number of States which were Members of the Organization at the time of the session
	All the texts have been submitted	Some of these texts have been submitted	None of these texts have been submitted (including cases in which no information has been supplied by the Government)	
60 (June 1975)	124	2	–	126
61 (June 1976)	124	–	7	131
62 (October 1976)	125	1	6	132
63 (June 1977)	114	5	16	135
64 (June 1978)	128	3	5	136
65 (June 1979)	127	2	10	139
66 (June 1980)	122	–*	22	144
67 (June 1981)	130	4	11	145
68 (June 1982)	128	4	18	150
69 (June 1983)	132	2	16	150
70 (June 1984)	127	–*	23	150
71 (June 1985)	129	5	16	150
72 (June 1986)	131	1	18	150
74 (September/October 1987)	125	1	24	150
75 (June 1988)	132	3	15	150
76 (June 1989)	110	–	40	150
77 (June 1990)	100	–	50	150
78 (June 1991)	98	–	51	149
79 (June 1992)	87	1	69	157
80 (June 1993)	97	1	73	171
81 (June 1994)	89	5	77	171
82 (June 1995)	77	3	94	174
83 (June 1996)	48	2	124	174

* At this session the Conference adopted one Recommendation only.

Appendix III. Summary of information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities

Article 19 of the Constitution of the International Labour Organization prescribes, in paragraphs 5, 6 and 7, that Members shall bring the Conventions and Recommendations adopted by the International Labour Conference before the competent authorities within a specified period. Under the same provisions the governments of member States shall inform the Director-General of the International Labour Office of the measures taken to submit the Conventions and Recommendations to the competent authorities, and also communicate particulars of the authority or authorities regarded as competent, and of the action taken by them.

In accordance with article 23 of the Constitution a summary of the information communicated in pursuance of article 19 is submitted to the Conference.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification. In this connection, the summarized information will appear in an annex to the report of the Committee of Experts on the Application of Conventions and Recommendations.

The present summary contains information relating to the submission to the competent authorities of the Convention and Recommendation adopted by the Conference at its 83rd Session held in Geneva from 4 to 20 June 1996.

The period of one year provided for the submission to the competent authorities of the instruments in question expired on 20 June 1997 and the period of 18 months on 20 December 1997.

The appendix also contains a summary of additional information relating to the submission to the competent authorities of the Conventions and Recommendations adopted by the Conference at its 31st to 82nd Sessions (1948 to 1995). This summarized information consists of communications which were forwarded to the Director-General of the International Labour Office after the close of the 84th Session of the Conference and which could not, therefore, be laid before the Conference at that session.

List of instruments adopted by the Conference at its 72nd to 83rd Sessions

72nd Session (1986)

Asbestos Convention (No. 162);
Asbestos Recommendation (No. 172)

73rd Session (1987)

The Conference did not adopt any Conventions or Recommendations at this Session.

74th (Maritime) Session (1987)

Seafarers' Welfare Convention (No. 163);
Health Protection and Medical Care (Seafarers) Convention (No. 164);
Social Security (Seafarers) (Revised) Convention (No. 165);
Repatriation of Seafarers (Revised) Convention (No. 166);
Seafarers' Welfare Recommendation (No. 173);
Repatriation of Seafarers Recommendation (No. 174).

75th Session (1988)
Safety and Health in Construction Convention (No. 167);
Employment Promotion and Protection against Unemployment Convention (No. 168);
Safety and Health in Construction Recommendation (No. 175);
Employment Promotion and Protection against Unemployment Recommendation (No. 176).

76th Session (1989)
Indigenous and Tribal Peoples Convention (No. 169).

77th Session (1990)
Chemicals Convention (No. 170);
Night Work Convention (No. 171);
Chemicals Recommendation (No. 177);
Night Work Recommendation (No. 178).

78th Session (1991)
Working Conditions (Hotels and Restaurants) Convention (No. 172);
Working Conditions (Hotels and Restaurants) Recommendation (No. 179).

79th Session (1992)
Protection of Workers' Claims (Employer's Insolvency) Convention (No. 173);
Protection of Workers' Claims (Employer's Insolvency) Recommendation (No. 180).

80th Session (1993)
Prevention of Major Industrial Accidents Convention (No. 174);
Prevention of Major Industrial Accidents Recommendation (No. 181).

81st Session (1994)
Part-Time Work Convention (No. 175);
Part-Time Work Recommendation (No. 182).

82nd Session (1995)
Safety and Health in Mines Convention, 1995 (No. 176);
Safety and Health in Mines Recommendation, 1995 (No. 183).

83rd Session (1996)
Home Work Convention (No. 177);
Home Work Recommendation (No. 184).

Summary of information on the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference at its 83rd Session (Geneva, 1996) and of supplementary information on the texts adopted between its 31st and 82nd Sessions (1948-95)

Antigua and Barbuda. The instruments adopted between the 68th and 81st Sessions of the Conference were submitted to the competent authority on 5 February 1997.

Bahamas. The instruments adopted at the 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

Bahrain. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Belarus. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority. Conventions No. 151 (64th Session) and No. 154 (67th Session) were ratified on 8 September 1997.

Burkina Faso. The instruments adopted at the 77th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to the competent authorities. Conventions No. 105 (40th Session), No. 141 (60th Session), No. 161 (71st Session) were ratified on 25 August 1997, and Convention No. 170 (77th Session) was ratified on 15 September 1997.

Central African Republic. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Czech Republic. The instruments adopted at the 81st, 82nd and 83rd Sessions of the Conference have been submitted to the competent authority.

Democratic Republic of the Congo. The instruments adopted at the 70th, 71st, 72nd, 74th, 75th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

Djibouti. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Egypt. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

El Salvador. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Ethiopia. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Germany. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Greece. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Guatemala. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Hungary. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Iceland. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Indonesia. The instruments adopted at the 82nd and 83rd Sessions of the Conference have been submitted to the competent authority.

Islamic Republic of Iran. The instruments adopted at the 82nd and 83rd Sessions of the Conference have been submitted to the competent authority.

Jamaica. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Japan. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Jordan. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Republic of Korea. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Kuwait. The instruments adopted at the 82nd and 83rd Sessions of the Conference have been submitted to the competent authority.

Libyan Arab Jamahiriya. The instruments adopted at the 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authority.

Luxembourg. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Malaysia. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Mozambique. The instruments adopted at the 78th, 79th, 80th, 81st and 82nd Sessions of the Conference have been submitted to the competent authority. Conventions No. 87 (31st Session), No. 98 (32nd Session), No. 122 (48th Session) and No. 144 (61st Session) were ratified on 23 December 1996.

Myanmar. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Namibia. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Nepal. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority. Convention No. 98 (32nd Session) was ratified on 11 November 1996 and Convention No. 138 (58th Session) was ratified on 30 May 1997.

Nicaragua. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Norway. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Oman. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Panama. The instruments adopted at the 82nd and 83rd Sessions of the Conference have been submitted to the competent authority.

Paraguay. The instruments adopted at the 68th, 69th (Recommendation No. 167), 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th and 81st Sessions of the Conference have been submitted to the competent authority.

Peru. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Philippines. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Poland. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Portugal. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Qatar. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Romania. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Russian Federation. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

San Marino. The instruments adopted at the 82nd and 83rd Sessions of the Conference have been submitted to the competent authority.

Saudi Arabia. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Singapore. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Slovakia. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority. Convention No. 144 (61st Session) was ratified on 10 February 1997 and Conventions No. 105 (40th Session) and No. 138 (58th Session) were ratified on 29 September 1997.

Slovenia. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority. Convention No. 105 (40th Session) was ratified on 24 June 1997.

Tajikistan. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Togo. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Trinidad and Tobago. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority. Convention No. 100 (34th Session) was ratified on 29 May 1997.

Tunisia. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

Turkey. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

United States. The instruments adopted at the 83rd Session of the Conference have been submitted to the competent authority.

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